

Chapter XXII.

Public records.

A. State policy.

1. Fla. Stat. § 119.01(1) (2003) states, “It is the policy of this state that all state, county and municipal records shall at all times be open for a personal inspection by any person.”
2. Fla. Stat. § 119.07(1)(a) (2003) states, “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 the custodian’s designee...”
3. Article I, Section 24 of the Florida Constitution states,

Access to public records and meetings.--

(a) 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder, counties, municipalities, and districts, and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote or each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this

section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement to this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

B. State preemption. In Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984), the court held that the entire area of public records was preempted by the state, and that a municipality lacked the authority to adopt an ordinance providing for 48-hour delay prior to the release of a personnel file.

C. Definitions.

1. Fla. Stat. § 119.011(1) (2003) defines “public records” to mean:

[A]ll 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.

2. Fla. Stat. § 119.011(2) defines “agency” to mean:

[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

3. In Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So. 2d 633, 640 (Fla. 1980), the court construed the statutory definition of a “public record” to be “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

4. The subject of public access to judicial branch records has also been addressed in Rule 2.051, Fla. R. Jud. Admin. “Records of the judicial branch” are defined to be all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity. See also In re Amendments to Rule of Judicial Administration 2.051, 651 So.2d 1185 (Fla. 1995); Report of the Supreme Court Workgroup on Public Records, 825 So. 2d 889 (Fla. 2002).

D. Items that do not meet the definition of public records.

1. Handwritten notes. In Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So. 2d 633 (Fla. 1980), one of the specific findings in this case was that a consultant’s handwritten notes, which were made when interviewing job applicants, were not public records. The court contrasted the definition of public records with those materials which were prepared as drafts or notes, that are mere precursors of governmental records, and not, in of themselves, intended as final evidence of the knowledge to be recorded. 379 So. 2d at 640. The court, however, further explained that some drafts *may* be public records and stated,

Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency’s later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business.

Id.

2. Notes for personal use. The court has held that “notes from the attorneys to themselves designed for their own personal use in remembering certain things or preliminary guides intended to aid the attorneys when they later formalize their knowledge are not within the term ‘public record’.” State v. Kokal, 562 So. 2d 324, 327 (Fla. 1990). See also Lopez v. State, 696 So. 725 (Fla. 1997) (attorney’s handwritten notes dealing with trial strategy and cross-examination of witnesses were not public records); The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 So. 2d 185 (Fla. 1st Dist. App. 2002) (notes of individual commission members are not subject to public disclosure because they are not public record).
3. Outlines, time lines, and page notations regarding information in the record and similar items contained in the state prosecution’s files were not “final evidence of knowledge obtained in connection with the transaction of business” and did not fall within the definition of a public

record. Johnson v. Butterworth, 713 So. 2d 985 (Fla. 1998). See also Orange County v. Florida Land Company, 450 So. 2d 341 (Fla. 5th Dist. App. 1984) (list in outline form of items of evidence needed for trial, questions to be asked a witness, and proposed trial outline were not “public records”).

4. Similarly, in Atkins v. State, 663 So.2d 624 (Fla. 1995), the court found that notes of the state attorney’s investigations and annotated photocopies of decisional law were exempt from disclosure because they were not public records.
5. Personal e-mail. In Times Publishing Company v. City of Clearwater, 830 So.2d 844 (Fla. 2d Dist. App. 2002), the court held that the personal e-mail of city employees did not qualify as public records subject to disclosure under the public records statute. The court determined that, because personal e-mails were not created or received in connection with the official business of the city, or in connection with the transaction of the city's official business, the e-mails did not qualify as “public records” subject to disclosure. The question was also certified to the Florida Supreme Court, and in a recent decision, the court held that personal e-mails did not fall within the definition of public records subject to disclosure by virtue of their placement on a government-owned computer system. State v. City of Clearwater, 2003 WL 22097478 (Fla. 2003).

E. Public records disclosure generally.

1. In general, all public records are open for public inspection and copying, unless the Legislature has specifically exempted them from disclosure or the records have been made confidential by law. Wait v. Florida Power and Light Company, 372 So.2d 420 (Fla. 1979). See also Fla. Atty. Gen. Op. 00-11 (2000).
2. In Department of Professional Regulation v. Spiva, 478 So. 2d 382 (Fla. 1st Dist. App. 1985), the court held that merely because documents are exempt from disclosure pursuant to the public records law does not necessarily mean those same documents are not subject to discovery.

F. Public records: examples and exemptions.

1. E-Mail.
 - (a) In Fla. Atty. Gen. Op. 96-34 (1996), the Attorney General opined that e-mail messages made or received by the employees of the Property Appraiser’s Office in connection with the transaction of official business were public records.

- (b) However, personal e-mails of public employees are not public records. See Times Publishing Company v. City of Clearwater, 830 So.2d 844 (Fla. 2d Dist. App. 2002), approved State v. City of Clearwater, 2003 WL 22097478 (Fla. 2003).

2. Personnel information.

- (a) Background information, including resumes, received in relation to potential applicants for public employment, are subject to disclosure under the Public Records Laws. See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980). This is true even if the information is collected by a private agency acting on behalf of the public agency. See id.
- (b) Certain personal information (home addresses, telephone numbers, photographs, etc.) concerning active or former police officers, firefighters, judges, probation officers, code enforcement officers, animal control officers, human resource directors and managers are exempt. Fla. Stat. § 119.07(3)(i) (2003).
- (c) Social security numbers of all current and former public employees are exempt from disclosure. Fla. Stat. § 119.07(3)(x) (2003). However, in Fla. Atty. Gen. Op. 99-20 (1999), the Attorney General opined that the clerk of court may provide the social security numbers of county employees to the county's workers' compensation carrier. Although this information would ordinarily be exempt from public disclosure, the social security numbers were being requested by the county's insurance carrier, not the public.
- (d) Certain medical information, medical reports, medical claims information, and employee assistance program information of public employees are exempt from disclosure. See, e.g., Fla. Stat. §§ 119.07(3)(v), 112.08(7), 125.585, 760.50(5), 440.125, and 440.132 (2003).
- (e) In News-Press Publishing Company v. Kaune, 511 So. 2d 1023 (Fla. 2d Dist. App. 1987), the court held that reports of a medical physical examination of fire fighters, which were in the physician's possession, and which were unrelated to job performance, were not subject to disclosure under Chapter 119, Fla. Stat. The court also retroactively applied the exemption set forth in Fla. Stat. § 119.07 for county/municipal employees' medical records in county/municipal group or self-insured plans.
- (f) In addition, in Fla. Atty. Gen. Op. 02-73 (2002), the Attorney General opined that a local government was not authorized to release equal opportunity records

containing confidential information, even if the records were anonymous (i.e., the individual's identity was not revealed on the record).

- (g) Bank account numbers and debit, charge, and credit card numbers are exempt from disclosure. Fla. Stat. § 119.07(3)(dd).
- (h) Examination questions and answer sheets administered by a governmental agency for the purpose of licensure, certification or employment are exempt from disclosure. Fla. Stat. § 119.07(3)(a) (2003).
- (i) Unless specifically exempted, the Florida courts have consistently held that information contained in personnel files are public records subject to disclosure. Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984); Michel v. Douglas, 464 So. 2d 545 (Fla. 1985); Dade Co. School Board v. Miami Herald, 443 So. 2d 268 (Fla. 3d Dist. App. 1983); Roberts v. News-Press Pub. Co., Inc., 409 So. 2d 1089 (Fla. 2d Dist. App. 1982), rev. den. 418 So. 2d 1280 (Fla. 1982).

3. Complaints of employment discrimination.

- (a) Complaints and other records in the custody of any agency in the executive branch of state government which relate to a complaint of employment discrimination are exempt from disclosure until a finding is made as to probable cause, the investigation becomes inactive, or the complaint or other record is made part of the official record of a hearing or court proceeding. Fla. Stat. § 119.07(3)(q) (2003).
- (b) However, if an alleged victim chooses not to file a complaint relating to an allegation of employment discrimination, and requests that the records of the complaint remain confidential, then the records are confidential and exempt from disclosure. Fla. Stat. § 119.07(3)(u).

4. Disciplinary actions.

- (a) Unless there are specific exemptions for complaints and investigatory materials against public employees, then the materials are subject to disclosure under Chapter 119, Fla. Stat. See Garner v. Florida Comm. on Ethics, 415 So. 2d 67 (Fla. 1st Dist. App. 1982), rev. den. 424 So. 2d 761 (Fla. 1983).
- (b) There are, however, statutory exemptions to disclosure of certain disciplinary/investigative material.

- (1) Fla. Stat. §§ 119.07(3)(b) through (h) provide exemptions for certain criminal intelligence information and criminal investigation information, including active criminal intelligence information and active criminal investigative information.
- (2) In News-Press, Inc. v. Sapp, 464 So. 2d 1335 (Fla. 2d Dist. App. 1985), the court held that documents relating to the sheriff's office internal investigation of a shooting by deputies, which was also under investigation by the state attorney and the grand jury, were exempt from disclosure, as the subject documents constituted "active criminal information". See also Barfield v. City of Ft. Lauderdale Police Dept., 639 So. 2d 1012 (Fla. 4th Dist. App. 1994), rev. den. 649 So. 2d 869 (Fla. 1994).
- (3) Fla. Stat. § 112.533(2) provides an exemption for complaints against law enforcement officers and correctional officers until the conclusion of the internal investigation or until it ceases to be active. See also Fla. Stat. § 112.532(4)(b).
- (4) While there is no clear definition provided by statute as to when such an internal affairs matter actually has been concluded, Fla. Stat. § 112.533(2)(b), presumes such an investigation to be inactive if no finding is made within 45 days. Also, the exemption may not be applicable if there is no "written" complaint. City of Delray Beach v. Barfield, 579 So. 2d 315 (Fla. 4th Dist. App. 1991).
- (5) Fla. Stat. § 1012.796(4) (2003) provides an exemption for complaints and information obtained pursuant to an investigation against school teachers and administrators until the conclusion of the preliminary investigation.

5. Criminal intelligence information and criminal investigation information.

- (a) Fla. Stat. §§ 119.07(3)(b) through (h), and (k) (2003) set forth exemptions to disclosure of certain criminal intelligence information and criminal investigation information.
- (b) In the case of Woolling v. Lamar, 764 So.2d 765, 768 (Fla. 5th Dist. App. 2000), rev. den. 786 So.2d 1186 (Fla. 2001), the Fifth DCA defined "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency during the course of

conducting a criminal investigation, such as information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

- (c) For the exemption to apply, the materials must actually be prepared during the course of the investigation, not prior to it. Tribune Co. v. Canella, 438 So. 2d 516 (Fla. 2d Dist. App. 1983), quashed on other grounds 458 So.2d 1075 (Fla. 1984).
- (d) Information otherwise exempt becomes a public records when the information is given to arrested persons, defendants, or their counsel. Tribune Co. v. Public Records, 493 So. 2d 480 (Fla. 2d Dist. App. 1986), rev. den. 503 So.2d 327 (Fla. 1987).
- (e) The exemption also does not apply to information which was previously made available at a public hearing or through discovery. Staton v. McMillan, 597 So. 2d 940 (Fla. 1st Dist. App. 1992), rev. dismissed 605 So.2d 1266 (Fla. 1992). See also City of St. Petersburg v. Romine, 719 So. 2d 19 (Fla. 2d Dist. App. 1998) (where identity of informant had been previously disclosed, records of amounts paid were subject to disclosure; trial court should hold in camera inspection and redact portions that would reveal specific cases worked on by informant).
- (f) The question may also arise as to how long a criminal investigation is active. Even if the law enforcement agency has not developed a suspect through its investigation to date, a criminal investigation may still be considered active. Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st Dist. App. 1985). However, the courts will not consider this exemption to still be applicable when all normal appeals have been concluded. See Tribune Co. v. Public Records, 493 So. 2d 480 (Fla. 2d Dist. App. 1986), rev. den. 503 So. 2d 327 (Fla. 1987). The Florida Supreme Court has stated that

To say that criminal investigative information continues to be active even after the conviction and sentence have become final would be to hold that such information would never become inactive because there are always some circumstances under which a defendant may file a motion for post conviction relief.

State v. Kokal, 562 So. 2d 324, 326 (Fla. 1990).

- (g) In Christy v. Palm Beach County Sheriff's Office, 698 So.2d 1365 (Fla. 4th Dist. App. 1997), cause dismissed 737 So.2d 550 (Fla. 1999), the court found that files pertaining to the petitioner's arrest that were generated in a criminal investigation

conducted 13 years prior were not “active” for purposes of a Chapter 119 exemption in a separate pending prosecution.

- (h) In Fla. Atty. Gen. Op. 95-48 (1995), the Attorney General opined that a county’s division of emergency management could delete the portion of a “911” recording that was determined by a criminal justice agency to be active criminal investigative information.
- (i) The Florida Supreme Court has held that unfiled discovery materials in civil and criminal cases are not accessible pursuant to a Chapter 119 request. See Miami Herald Publishing Co. v. Gridley, 510 So. 2d 884 (Fla. 1987), cert. den. 485 U. S. 960 (1988) (unfiled discovery materials in civil case not accessible to public and press); Palm Beach Newspapers, Inc. v. Burk, 504 So. 2d 378 (Fla. 1987), cert. den. 484 U. S. 954 (1987) (press not entitled to obtain copies of unfiled depositions in attempted murder case). See also Wootton v. Cook, 590 So. 2d 1039 (Fla. 1st Dist. App. 1991) (no requirement for clerk of circuit court to make a list of documents which might be available).
- (j) In Downs v. Austin, 522 So. 2d 931 (Fla. 1st Dist. App. 1988), the court held that the results of a polygraph test which the state administered to an accomplice were not exempt from disclosure under the Public Records Act. However, the court appears to have based its decision in part on a finding that the state had twice disclosed these results publicly (at a sentencing hearing and before the Clemency Board), as well as the court’s determination that the results were not “active” criminal investigation information.
- (k) The Florida Supreme Court also has found that client files in the possession of the Capital Collateral Representative, in furtherance of its representation of an indigent defendant, were not subject to public disclosure. Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990). The court determined that the requested records were not governmental records for purposes of the Public Records Act; rather, the records were private records of the defendant.
- (l) In State v. Buenoano, 707 So. 2d 714 (Fla. 1998), court records that included criminal investigative materials obtained from out-of-state agencies were exempt from disclosure under federal loan agreement as well as provision of Rule 2.051, Rules of Judicial Administration, which exempts court records from disclosure if they are also exempt pursuant to Fla. Stat.

6. Information related to victims of crime.

- (a) Under Fla. Stat. §§ 119.07(3)(f), (g), and (s), certain criminal intelligence information or criminal investigative information, such as the photograph, name, address (home or office), and personal assets, of certain victims of a crime are exempt from disclosure. See also Fla. Stat. § 119.105 (2003).
- (b) In the case of Morris Communications Co., LLC v. State, 844 So. 2d 671 (Fla. 1st Dist. App. 2003), the court found that media organizations were entitled to access to discovery materials in a criminal case, including search warrants and videotaped interviews of the victim, where in camera review of materials subject to protective order did not support finding that release of requested records would pose a serious and imminent threat to the administration of justice.

7. Attorney work-product exemption.

- (a) Prior to October 1, 1984, the Fla. Stat. did not contain, nor would the Florida courts recognize, any exemption for having attorney work-product materials disclosed under a Chapter 119, Fla. Stat., public records request. See Wait v. Florida Power and Light Co., 372 So. 2d 420 (Fla. 1979); City of Williston v. Roadlander, 425 So. 2d 1175 (Fla. 1st Dist. App. 1983).
- (b) However, the Fla. Stat. were subsequently modified to add a limited exemption for attorney work-product. The exemption presently reads as follows:

A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings.

Fla. Stat. § 119.07(3)(1)(1) (2003).

- (c) In accordance with Bryan v. Butterworth, 692 So. 2d 878 (Fla. 1997), and State v. Kokal, 562 So. 2d 324 (Fla. 1990), if there is a dispute concerning whether documents fall within the work product exemption, the trial court should conduct an in-camera review of the documents.
- (d) The work-product exemption is limited by the specific prerequisites set forth in the Fla. Stat., and although the document is deemed public, it would not be subject to disclosure until the conclusion of the litigation or adversarial administrative proceeding.
 - (1) Lawyer-client privilege does not exempt written communications between lawyer and governmental clients from disclosure; however, there is a temporary exemption from public disclosure of government agency, lawyer-prepared, litigation files during pendency of the litigation. City of North Miami v. Miami Herald Publishing Co., 468 So. 2d 218 (Fla. 1985).
 - (2) Attorney-client privilege cannot provide basis for the county to refuse to disclose closed litigation files. Seminole County v. Wood, 512 So.2d 1000 (Fla. 5th Dist. App. 1987), rev. den. 520 So.2d 586 (Fla. 1988).
- (e) In Patton v. State, 784 So. 2d 380 (Fla. 2000), the court found that the state prosecutor's personal notes on specific questions to ask during voir dire, notes on potential jurors, a time-line of events, and specific detailed questions to ask witnesses were clearly work product and not discoverable as public records.
- (f) In City of Miami Beach v. De Lapp, 472 So. 2d 543 (Fla. 3d Dist. App. 1985), the court found that legal memoranda prepared for trial were privileged and thus not subject to disclosure under the public records law. See also City of Melbourne v. A.T.S. Melbourne, Inc., 475 So. 2d 270 (Fla. 5th Dist. App. 1985) (scope of deposition of and production of documents from city attorney by defendants in civil action brought by city were properly limited to prevent public disclosure of attorney-prepared litigation files during litigation).
- (g) However, a document's exemption from disclosure under the Public Records Act does not render it automatically privileged for the purposes of discovery pursuant to the Florida Rules of Civil Procedure in an administrative proceeding. Department of Professional Regulation v. Spiva, 478 So. 2d 382 (Fla. 1st Dist. App. 1985). In this case, the court held that the grade reports of successful applicants, which an unsuccessful applicant sought to inspect, were not subject to any recognized privilege of exclusion from discovery.

- (h) The statutory work product exception may, however, be of limited application if the decision in Coleman v. Austin, 521 So. 2d 247 (Fla. 1st Dist. App. 1988) is any indication. In reversing a trial court order, which limited inspection of a state attorney's case file for a charge which had been nolle prossed, the First District Court of Appeal stated that:

And although notes from attorneys to themselves might not be public records when intended only for their own personal use, inter-office and intra-office memoranda may constitute public records even though encompassing trial preparation materials.

521 So. 2d at 248.

- (i) The issue of settlement with one party-defendant while litigation is continued with another party is addressed in State of Florida v. Coca-Cola Bottling, Co., of Miami, Inc., 582 So. 2d 1 (Fla. 4th Dist. App. 1990). Here the Fourth District Court of Appeal found that the exemption ceased when the litigation was concluded with one party by settlement, but also found that this did not mean that the litigants were subject to being deposed on that issue. Rather, the Court found that the statute authorizing disclosure of public records prepared for litigation, following conclusion of the litigation, did not cover oral testimony. 582 So.2d at 2.
- (j) In the case of Hill v. Prudential Ins. Co. of America, 701 So.2d 1218 (Fla. 1st Dist. App. 1997), rev. den. 717 So.2d 536 (Fla. 1998), documents that were obtained or created by the state in the course of investigating a violation of the state insurance code were considered "public records" subject to disclosure. In this case, the documents were in the state's possession at the time the state made a decision to settle with the insurance company that was charged with the violation.
- (k) In the case of Doe v. State, 587 So. 2d 526 (Fla. 4th Dist. App. 1991), decision approved by Post-Newsweek Stations, Florida, Inc. v. Doe, 612 So. 2d 549 (Fla. 1992), access to pretrial discovery materials in a criminal case was permitted under Chapter 119, Fla. Stat. This involved access to business cards, notes, journals, lists, and tape recordings which would reveal the identities of "clients" of the defendant.
- (l) In Fla. Atty. Gen. Op. 00-07 (2000), the Attorney General opined that bills and invoices of outside attorneys who were contracted for the defense of the county or its employees for alleged civil rights violations were subject to disclosure. If the bills and invoices contained exempt information, such as mental impressions,

conclusions, litigation strategies or legal theories, then the exempt material may be redacted while the remaining information was disclosed.

- (m) The Florida Supreme Court in Roberts v. Butterworth, 668 So.2d 580 (Fla. 1996), found that statutes which set out exemptions to the public records were retroactive. The court stated that exemptions are remedial in nature and thus could be applied retroactively. Even though the documents were requested prior to the statute's amendment, the exemption stands. See also Davis v. Sarasota County Public Hospital Board, 480 So. 2d 829 (Fla. 1986) (statutory attorney-client exemption from disclosure under Public Records Act was type of statute which allowed retroactive application).
 - (n) Finally, when responding to a public records request, it is important to state with sufficient specificity the reason why documents are believed to be exempt from disclosure. See Fla. Stat. § 119.07(2)(a). For example, in the case of Weeks v. Golden, 764 So. 2d 633 (Fla. 1st Dist. App. 2000), the court found that the state attorney's response that information was "relat[ed] to the victim" and thus exempt was insufficient. The Court found that this response failed to comply with Fla. Stat. § 119.07(2)(a), because the state attorney failed to specify the reason why the documents were exempt, or the statutory basis for the exemption.
8. Transcript. In the case of State, Dept. of Health and Rehabilitative Services v. Southpointe Pharmacy, 636 So. 2d 1377 (Fla. 1st Dist. App. 1994), the First DCA found that transcripts prepared by a court reporter, even if such transcript was copyrighted, became a public record once the transcript was filed with the state agency.
9. Examination questions.
- (a) Under Fla. Stat. § 119.07(3)(a), examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from public records disclosure. A person who has taken such an examination has the right to review his or her own completed examination.
 - (b) In Dickerson v. Hayes, 543 So. 2d 836 (Fla. 1st Dist. App. 1989), the court held that rating sheets used by members of an assessment team in an oral interview, and then used as a basis for denying a promotion to a lieutenant, were not public records subject to inspection, but were exempt as employment examination answer sheets.

10. Collective bargaining. Pursuant to Fla. Stat. § 447.605(3) (2003), all work products prepared by a public employer for and during negotiations with a labor organization are confidential and exempt from disclosure.

11. Telephone Numbers and Records.
 - (a) In Rea v. Sansbury, 504 So. 2d 1315 (Fla. 4th Dist. App. 1987), rev. den. 513 So.2d 1063 (Fla. 1987), the court held that an unlisted telephone number which was provided to staff members in order that they could, by telephone, listen to the proceedings of the county commission and other county boards, was not subject to disclosure under Chapter 119, Fla. Stat. The court determined that the telephone number, which had limited availability for access because of the capacity of the machinery, was not a public record. This was despite allegations in the petition for writ of mandamus that certain persons in the private sector had been selectively given the telephone number for their private use and access. 504 So. 2d at 1316.
 - (b) In Fla. Atty. Gen. Op. 99-74 (1999), the Attorney General's Office opined that the telephone numbers in a school district's record of calls made on school district telephones were public records, even if the calls were personal and the employee reimbursed the school district for the calls.
 - (c) However, in Media General Operations, Inc. v. Feeney, 849 So. 2d 3 (Fla. 1st Dist. App. 2003), rev. den. 857 So. 2d 196 (Fla. 2003), the court held that employees' private or personal calls were not public records subject to disclosure, and therefore such information could be redacted where the calls were not created or received in connection with the official business of the House of Representatives.

12. Traffic accident reports.
 - (a) Pursuant to Fla. Stat. § 316.066(3)(c) (2003), crash reports which reveal personal information concerning the parties involved in the crash are confidential and exempt from disclosure for a period of 60 days after the date the report is filed.
 - (b) In Spurlin v. Scheiner, 531 So. 2d 988 (Fla. 2d Dist. App. 1988), the court held that the custodian of accident reports must produce for public inspection that part of the report which is obtained from a person not required to make a report as a result of being involved in an accident. The court reiterated that the privilege set forth in the Fla. Stat. was expressly limited to the reports of persons involved in accidents. Therefore, the documents in question were not exempt from the public records law.

- (c) This decision was further clarified in Scheiner v. Spurlin, 555 So. 2d 403 (Fla. 2d Dist. App. 1989), by holding that such acceptable deletions do not include information concerning names and addresses of parties and witnesses, only to statements relating to the incidents surrounding the occurrence of the accident involved. See also Lobree v. Caporossi, 139 So. 2d 510 (Fla. 2d Dist. App. 1962), cert. den. 143 So. 2d 649 (Fla. 1962); Brackin v. Boles, 452 So. 2d 540 (Fla. 1984); Stevens v. Duke, 42 So. 2d 361 (Fla. 1949).
13. Records of private entities by virtue of contracts and leases with a public agency.
- (a) Finding that, by virtue of the obligations set forth in a towing contract an assignee of the contract was performing essentially government functions, the court held that the business records of the assignee were public records open to inspection. Fox v. News-Press Publishing Co., Inc., 545 So. 2d 941 (Fla. 2d Dist. App. 1989). See also PHH Mental Health Service, Inc. v. The New York Times Company, 582 So. 2d 1191 (Fla. 2d Dist. App. 1991) (corporation was acting on behalf of agency); Sarasota Herald Tribune v. Community Health Corp., Inc., 582 So. 2d 730 (Fla. 2d Dist. App. 1991) (not-for-profit corporation formed to further the interests of public hospital was acting on its behalf, and thus subject to Chapter 119).
- (b) However, there is a dispute over blanket applicability of Chapter 119 to such contractors. The Fourth District Court of Appeal found that a corporation which had been hired by the Palm Beach County School Board to perform professional architectural services was “not acting on behalf of any public agency,” and thus was not subject to Chapter 119 disclosure requirements. News and Sun Sentinel v. Schwab, Twitty and Hanser Architectural Group, Inc., 570 So. 2d 1095 (Fla. 4th Dist. App. 1990). The Florida Supreme Court agreed with this decision, holding that the corporation was not “acting on behalf of any public agency,” and further finding that, for purposes of Florida’s Public Records Act, a private corporation does not act “on behalf of” a public agency merely by entering into a contract to provide professional services to the agency. News and Sun-Sentinel Company v. Schwab, Twitty and Hanser Architectural Group, Inc., 596 So. 2d 1029 (Fla. 1992).
- (c) In the Schwab case, the Florida Supreme Court noted that, when determining whether a private entity under contract with a public agency falls within the purview of the Public Records Act, the courts have generally looked to the “totality of factors” which indicate the level of involvement by the agency. Such factors include, but are not limited to, the following: 1) the level of public funding; 2)

commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for who's benefit the private entity is functioning. News and Sun-Sentinel Company v. Schwab, Twitty and Hanser Architectural Group, Inc., 596 So. 2d 1029, 1031 (Fla. 1992).

- (d) In Fla. Atty. Gen. Op. 02-53 (2002), it was concluded that the activities of a not-for-profit corporation, which was specifically created to contract with Martin County for the operation of a public golf course on county property acquired by public funds, was subject to both the Sunshine and Public Records Laws.
- (e) In Fla. Atty. Gen. Op. 92-37 (1992), the question of whether a performing arts center, which operated the center pursuant to a lease with the City of Tampa, was subject to the Public Records Act. Based upon the facts of the situation and the "totality of factors" analysis set forth in Schwab, the Attorney General determined that the center was an agency for purposes of Chapter 119.
- (f) Finding that a contractor was delegated the responsibility to act on behalf of a local government, the court held that Chapter 119 was applicable to certain records in Harold v. Orange County, 668 So.2d 1010 (Fla. 5th Dist. App. 1996). The court clarified that the records requested were not records that the contractor would normally keep in the course of its own business; rather, the requested records were materials submitted by others which the contractor was required to compile, maintain, and disclose to the county pursuant to its contract with the county.
- (g) In Dade Aviation Consultants v. Knight Ridder, Inc., 800 So. 2d 302 (Fla. 3d Dist. App. 2001), the court found that a private consulting firm retained under contract by the county to oversee the county's airport expansion project was required to disclose records concerning lobbyist expenses, in light of the "totality of factors" analysis delineated in Schwab.
- (h) In Wisner v. City of Tampa Police Dept., 601 So. 2d 296 (Fla. 2d Dist. App. 1992), the court held that a polygraph examiner's materials were subject to disclosure, and that the city could not circumvent applicability by having the contractor have physical custody of the records.

- (i) In Times Publishing Co., Inc. v. City of St. Petersburg, 558 So. 2d 487 (Fla. 2d Dist. App. 1990), the court held that the city improperly delegated its record-keeping function to the owner of the Chicago White Sox baseball team. The court further determined found that the owner of the team violated the Public Records Act by denying the press access to draft leases, which became public records once submitted to city officials during negotiations.
- (j) However, in the case of Weekly Planet, Inc. v. Hillsborough County Aviation Authority, 829 So.2d 970 (Fla. 2d Dist. App. 2002), the court held that leases between private entities were not public records subject to inspection. In this case, the Authority leased raw land to a private enterprise, which planned to develop a private, for-profit project on the subject land. The fact that a private enterprise was situated on land leased from a governmental authority did not transform leases and agreements between the developer and other private entities into public records. It was determined by the court that the Aviation Authority did not delegate a governmental function or governmental project to the developer, nor did the Authority involve itself in the project.
- (k) In Prison Health Services, Inc. v. Lakeland Ledger Pub. Co., 718 So. 2d 204 (Fla. 2d Dist. App. 1998), rev. den. 727 So. 2d 912 (Fla. 1999), the court held that records in possession of a private prison health services provider, which contracted with the sheriff to provide health care for inmates, were subject to production under the public records law.
- (l) In Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc., 718 So. 2d 227 (Fla. 3d Dist. App. 1998), rev. den. 729 So. 2d 389 (Fla. 1999), the court held that a private, on campus, operator of a bookstore at a state university was a public agency for purposes of the public records statute.
- (m) In Putnam County Humane Society, Inc. v. Woodward, 740 So. 2d 1238 (Fla. 5th Dist. App. 1999), the court held that when a county humane society assumed governmental investigative functions pursuant to statute, the society's records were subject to the Public Records Act.

14. Data processing software.

- (a) Fla. Stat. § 119.07(3)(o) (2003) provides a limited exemption for certain data processing software, including sensitive agency-produced software, as well as software obtained under a licensing agreement which prohibits disclosure and which is a trade secret.

- (b) The Attorney General's Office opined in Fla. Atty. Gen. Op. 90-102 (1990) that computer software licensed by a county from a private company was a public record which must be made available for examination and inspection, but unauthorized reproduction and distribution of such copyrighted software would be prohibited. See also Fla. Atty. Gen. Op. 91-61 (1991); Seigle v. Barry, 422 So. 2d 63 (Fla. 4th Dist. App. 1982), rev. den. 431 So. 2d 988 (Fla. 1983).
- (c) In Fla. Atty. Gen. Op. 03-42 (2003), it was determined that the county was not authorized to obtain copyright protection and require license agreements for its Geographic Information Systems (GIS) maps and related data in order to regulate and authorize redistribution of these materials for commercial use. The subject records did not appear to constitute “data processing software” as defined in Fla. Stat. § 119.084(1)(b), and thus were not subject to the copyright and licensing authorization contained in that statute.

15. Building plans.

- (a) Pursuant to Fla. Stat. § 119.07(3)(ee), building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from disclosure.
- (b) The question of whether building plans could be provided to contractors for competitive bidding purposes in light of this statute was addressed by the Attorney General in Fla. Atty. Gen. Op. 02-74 (2002). The Attorney General opined that a governmental entity could disclose and distribute documents exempted by Fla. Stat. § 119.07(3)(ee) in order to comply with the statutory requirements for competitive negotiation or competitive bidding. However, those entities or persons receiving such documents should then maintain the exempt status of the information.
- (c) Computer generated building plans and building design calculations which are labeled “trade secret” and filed with a local government building department are not exempt from disclosure under Fla. Stat. § 815.04(3) , merely because they are computer generated. Fla. Atty. Gen. Op. 97-87 (1997).

16. Housing assistance programs.

- (a) Pursuant to Fla. Stat. § 119.07(3)(bb) (2003), medical history records and information related to health or property insurance provided by an applicant in

relation to a federal, state or local housing assistance program are confidential and exempt from disclosure.

- (b) Records that were in possession of a city housing authority, where the records were obtained from federal agencies and had confidential status under federal law, were exempt from disclosure. Morris v. Whitehead, 588 So. 2d 1023 (Fla. 2d Dist. App. 1991). However, in the case of Housing Authority of the City of Daytona Beach v. Gomillion, 639 So. 2d 117 (Fla. 5th Dist. App. 1994), the court expressed that all records possessed by the housing authority were not exempt from public disclosure. In this case, the court ruled that tenant records were not exempt from disclosure under the Federal Privacy Act because the agency was not an agency of the federal government.
17. Acquisition of property. Fla. Stat. §§ 125.355 (for counties) and 166.045 (for municipalities) provide for exemptions from public records for appraisals, offers, and counteroffers during acquisition of real property. If an exemption is utilized, these sections require a certain number of appraisals, depending on value of property and procedures for acquisition and voting.
 18. Ridesharing. Fla. Stat. § 119.07(3)(j) (2003) exempts from disclosure certain ridesharing (car pooling) information provided to governmental agencies.
 19. Bids.
 - (a) Fla. Stat. § 119.07(3)(m) (2003) provides that sealed bids or proposals received by a government agency are exempt for a limited period of time.
 - (b) Fla. Stat. § 119.07(3)(t) (2003) states that any financial statement which an agency requires a prospective bidder to submit in order to prequalify to bid, or respond to a proposal, for a road or other public works project is exempt from disclosure.
 - (c) Fla. Stat. § 119.07(3)(z) (2003) exempts from disclosure data, records or documents used directly or solely by a municipally owned utility to prepare and submit a bid.
 20. Records of telecommunications companies. Fla. Stat. § 119.07(3)(r) (2003) provides that records containing the name, address and telephone number of subscribers, which are supplied by a telecommunication company to a state or local governmental agency, are exempt from disclosure.
 21. Audit reports.

- (a) Pursuant to Fla. Stat. § 119.07(3)(y) (2003), the audit report, as well as workpapers and notes related thereto, of an internal auditor which are prepared for or on behalf of a unit of local government are exempt from disclosure until the audit is completed and the audit report becomes final.
 - (b) In Nicolai v. Baldwin, 715 So. 2d 1161 (Fla. 5th Dist. App. 1998), a draft audit report of the county prepared by an internal auditor was not subject to disclosure because it had not been presented to the unit of local government and was not final. Further, a copy of the draft audit provided to the county administrator for management response did not amount to delivery to the unit of local government.
- 22. Bank account, debit, charge and credit card numbers. In accordance with Fla. Stat. § 119.07(3)(dd) (2003), bank account numbers, and debit, charge, and credit card numbers held by an agency are exempt from disclosure.
- 23. Security system plans. Records related to a security system plan of property owned by or leased to a governmental agency are exempt from disclosure pursuant to Fla. Stat. § 119.071 (2003).
- 24. Social security numbers.
 - (a) Pursuant to Fla. Stat. § 119.0721 (2003), all social security numbers held by a governmental agency are confidential and exempt from disclosure.
 - (b) In Fla. Atty. Gen. Op. 03-23 (2003), the Attorney General concluded that the “legitimate business purpose” exception in Fla. Stat. § 119.071 did not authorize the town to release the social security numbers of its water and sewer system customers to a private company that intended to enter the social security numbers into a computer database and sell access to the database to other entities and individuals.
 - (c) See also Fla. Stat. § 119.07(3)(x) (2003) (providing that social security numbers of current and former agency employees are exempt).
- 25. Discrimination complaints. Fla. Stat. § 119.07(3)(p) (2003), exempts from disclosure certain complaints and records relating to certain discrimination complaints until a finding of probable cause, the investigation becomes inactive, or the complaint or other records is made part of the official records of any hearing or court proceeding.

26. Risk management program claims files. Fla. Stat. § 768.28(16) (2003), provides that risk management program claims files are confidential and exempt from disclosure until termination of all litigation and settlement of all claims arising out of the same incident.
27. Autopsies.
 - (a) Fla. Stat. § 406.135 (2003) states that a photograph, video recording, or audio recording of an autopsy in the custody of a medical examiner is confidential and exempt from disclosure.
 - (b) The statute further provides that a local governmental entity, in furtherance of its official duties, and pursuant to a written request, may view or copy a photograph or video, or listen to or copy an audio recording, of an autopsy, but that the identity of the deceased shall remain confidential and exempt. The custodian of the record may not permit any other person, except an agent designated in writing by the deceased's surviving relative, to view or copy the photograph or video recording or listen to or copy an audio recording without a court order.
 - (c) In Campus Communications, Inc. v. Earnhardt, 821 So. 2d 388 (Fla. 5th Dist. App. 2002), rev. den. 848 So. 2d 1153 (Fla. 2003), cert. den. 124 S. Ct. 821 (2003), the court held that the statute exempting autopsy photos from the public records law served an identifiable public purpose, was no broader than necessary, and was enacted in accordance with applicable constitutional provisions.

G. Duties and procedures relating to public records requests.

1. Fla. Stat. § 119.07(1)(a) (2003) sets forth that “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 the custodian’s designee.”
2. Custodian of records.
 - (a) Fla. Stat. § 119.021 (2003), provides that the elected or appointed state, county or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee, is the records custodian.
 - (b) It is unlawful to delegate the public records keeping function to another entity in an attempt to evade the public records act. See Wisner v. City of Tampa Police Department, 601 So. 2d 296 (Fla. 2d Dist. App. 1992).

- (c) Officials charged by law with maintenance of public records may not seek to thwart inspection of public records by transferring the public records to another official. Tober v. Sanchez, 417 So. 2d 1053 (Fla. 3d Dist. App. 1982), pet. den., 426 So. 2d 27 (Fla. 1983).
- (d) See also Times Publishing Co., Inc., v. City of St. Petersburg, 558 So. 2d 487 (Fla. 2d Dist. App. 1990) (city improperly designated record-keeping functions to baseball team owner).
- (e) In Times Publishing Co. v. City of Clearwater, 830 So. 2d 844 (Fla. 2d Dist. App. 2002), approved 2003 WL 22097478 (Fla. 2003), the court determined that the city did not violate its obligation as custodian by failing to designate an official records custodian and allowing individual employees, without oversight, to review e-mails to determine whether communications were nonpublic records. Where the statute defined the official records custodian as an elected officer or officer's designee, the state did not limit who the records custodian could designate to review communications.
- (f) In Mintus v. City of West Palm Beach, 711 So. 2d 1359 (Fla. 4th Dist. App. 1998), the court held that a police officer, who had temporary possession of a document, did not have custody of the document with power to it.

3. Method of request.

- (a) A request for a document as a public record under Chapter 119, Fla. Stat., may be made either in writing or orally. See Fla. Atty. Gen. Op. 80-57 (1980), which determined that a request for copies of records which is sufficient to identify the records described must be honored by the custodian, whether the request is in writing, over the telephone, or made in person.
- (b) There is no requirement in the Public Records Act that requests for records must be in writing. Dade Aviation Consultants v. Knight Ridder, Inc., 800 So. 2d 302, 305 n.1 (Fla. 3d Dist. App. 2001).
- (c) However, Fla. Stat. § 119.07(2)(c) (2003) states that a written request is necessary to trigger the provisions of this sub-section, which prohibits disposal of the requested record for 30 days after the date upon which the written request for the documents is made.

4. Standing to make a request.

- (a) The public agency may not make a condition precedent that the person making the request demonstrate any “special interest” or “legitimate interest” in acquiring the public records, nor may the public agency require disclosure of the use that the person intends to make of such documents. See State v. McMillan, 38 So. 666 (Fla. 1905); State ex rel. Davidson v. Couch, 156 So. 297 (Fla. 1934); Bevan v. Wanicka, 505 So. 2d 1116 (Fla. 2d Dist. App. 1987).
- (b) The Public Records Act does not direct itself to the motivation of the person who seeks the records. News-Press Publishing Co., Inc. v. Gadd, 388 So. 2d 276 (Fla. 2d Dist. App. 1980).
- (c) There is no requirement that the name of the requestor be revealed, or the identity of any other person on whose behalf the requestor is acting, unless the custodian is required by law to obtain this information. Fla. Atty. Gen. Op. 92-38 (1992).

5. Timeliness and method of response.

- (a) Although a reasonable time to respond to requests will be permitted, the Florida Supreme Court has held that an automatic delay in responding to such requests for 48 hours was impermissible. Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984). The only delay permitted in the release of records is the limited reasonable time to allow the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt from disclosure. Id.
- (b) In the case of Barfield v. Town of Eatonville, 675 So.2d 223 (Fla. 5th Dist. App. 1996), the court found that an unjustified delay in complying with a public records request, whether by intentional wrongdoing or by ineptitude, amounted to an “unlawful refusal” to produce the records.
- (c) In Fla. Atty. Gen. Op. 97-39 (1997), the Attorney General opined that a school district was not required to furnish its electronic public records in an electronic format other than the standard format routinely maintained by the school district. If the district elected to provide the records in a different format, the costs of converting the information would be borne by the person requesting same.
- (d) In Fla. Atty. Gen. Op. 92-38 (1992), the Attorney General determined that there was no duty under Chapter 119 for the town to make its financial officer available for the purposes of answering questions regarding the financial records of the town.

- (e) In Times Publishing Co. v. A.J., 626 So. 2d 1314 (Fla. 1993), the court noted that the records custodian had the discretion to notify interested third parties of the imminent release of records.
6. Asserting exemptions.
- (a) Fla. Stat. § 119.07(2)(a) (2003) provides that the custodian of the records shall delete or excise from the record only that portion of the record to which an exemption has been asserted and validly applies.
 - (b) Further, the records custodian shall state the basis for the exemption, including the statutory citation, and if requested, shall provide in writing and with particularity the reasons for concluding that the record is exempt. Fla. Stat. § 119.07(2)(a) (2003).
 - (c) In Times Publishing Co. v. A.J., 626 So. 2d 1314 (Fla. 1993), the Florida Supreme Court held that child protection statutes and accompanying public records law exceptions gave standing to the non-custodian of a public record to assert an exception to disclosure of the record, provided the non-custodian was a member of the class the exception was intended to protect.
7. Copying Costs and “Special Service Charges.”
- (a) If copies of public records are requested, the provision of same can be conditioned upon the payment of the fee permitted by law, or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8-1/2 inches, upon payment of not more than 15 cents per one-sided copy, or upon the payment of the actual cost of duplication. An additional five cents may be charged for each two-sided copy. Fla. Stat. § 119.07(1)(a) (2003).
 - (b) The Fifth District Court of Appeal of Florida held that a public defender had no duty under Chapter 119 to provide a client with free copies of documents in an attorney's file. Woodson v. Durocher, 588 So. 2d 644 (Fla. 5th Dist. App. 1991), rev. den. 598 So. 2d 79 (Fla. 1992). The Second District Court of Appeal has also held that an indigent defendant had no right to free copies of criminal investigative information of the state attorney. Yanke v. State, 588 So. 2d 4 (Fla. 2d Dist. App. 1991), rev. den. 595 So. 2d 559 (Fla. 1992), cert. den. 503 U. S. 973 (1992).

- (c) The Attorney General’s Office determined that a school district was not required to provide free copies of public records to individual members of a school advisory council. Fla. Atty. Gen. Op. 99-46 (1999).
- (d) The statutes also provide for a reasonable “special service charge” if the nature or volume of the public records requested require extensive use of information technology resources, extensive clerical or supervisory assistance, or both. Fla. Stat. §119.07(1)(b). See also Fla. Atty. Gen. Op. 85-3 (1985), 85-80 (1985), 85-19 (1985), 86-69 (1986), 00-11 (2000). This would include extensive clerical or supervisory assistance required to safeguard the records, provided the charge reflected no more than the actual costs and ensured unfettered access while safeguarding the records. Fla. Atty. Gen. Op. 00-11 (2000).
- (e) In Florida Institutional Legal Services v. Florida DOC, 579 So. 2d 267 (Fla. 1st Dist. App. 1991), rev. den. 592 So.2d 680 (Fla. 1991), the court upheld a rule of the Department of Corrections which defined “extensive” as any request which required personnel more than 15 minutes to locate, review for confidential information, copy, and refile the records.
- (f) In Carden v. Chief of Police, City of Clewiston Police Department, 696 So. 2d 772 (Fla. 2d Dist. App. 1996), the court held that the police chief would be required to explain in more detail the reason for the magnitude (\$4,000) of the special service charge.

8. Maintenance of records.

- (a) In a case concerning the procedures for the providing or maintaining of public records, the court held that there was no cause of action under Chapter 119, Fla. Stat., for the negligent misrepresentation by a municipal building inspector that a certificate of occupancy had not been issued for a particular condominium unit. Friedberg v. Town of Longboat Key, 504 So. 2d 52 (Fla. 2d Dist. App. 1987).
- (b) See also City of Tarpon Springs v. Garrigan, 510 So. 2d 1198 (Fla. 2d Dist. App. 1987) (city’s furnishing of incorrect information regarding federal flood insurance was discretionary function, imposing no liability, and creating no cause of action).

9. Destruction of records.

- (a) Fla. Stat. § 119.041 (2003) provides that every public official shall systematically dispose of records no longer needed, subject to the consent of the Department of

State, Division of Library and Information Services, in accordance with Fla. Stat. § 257.36.

- (b) Fla. Stat. § 119.01(4) (2003) sets forth that each agency shall establish a program for the disposal of records that do not have sufficient legal, fiscal, administrative or archival value, in accordance with the Department of State's retention schedules.

H. Litigation regarding public records.

1. Fla. Stat. § 119.11(1) (2003) provides for an accelerated hearing process if litigation ensues over refusal to provide a requested document, giving the case priority over other pending cases on the docket. The Fourth District Court of Appeal of Florida found that this statutory rule did not directly conflict with the Rules of Civil Procedure, and was thus valid (requires a good faith effort by the Court to give priority). Salvador v. Fennelly, 593 So. 2d 1091 (Fla. 4th Dist. App. 1992).
2. An action in mandamus seeking to require the Public Service Commission to disclose telephone company documents which the Commission found to be confidential and exempt, was properly denied by the trial court based upon the newspapers' failure to exhaust administrative remedies available to them. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262 (Fla. 1st Dist. App. 1989), rev. den. 551 So.2d 461 (Fla. 1989).
3. In Daniels v. Bryson, 548 So. 2d 679 (Fla. 3d Dist. App. 1989), the court reviewed a permanent injunction entered by the trial court against the City of Miami and one of its employees to comply with future requests for documents pertaining to a particular task force. Finding that there was no likelihood of future violations, the appellate court overturned the injunction.
4. In Town of Manalapan v. Rechler, 674 So. 2d 789 (Fla. 4th Dist. App. 1996), rev. den. 684 So. 2d 1353 (Fla. 1996), the court held that production of public records which are requested constitutes a ministerial act for which mandamus will lie. However, mandamus will not be used to prevent future harm; therefore, the trial court erred in retaining jurisdiction.
5. In Times Publishing Co. v. A.J., 626 So. 2d 1314 (Fla. 1993), the court held that noncustodian of a public record had standing to assert statutory exemption if noncustodian was a member of a class that exemption was intended to protect.

I. Consequences of wrongful failure to produce records.

1. Fla. Stat. § 119.10 (2003), provides that any public officer who violates any provision of Chapter 119 is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.
2. Under Fla. Stat. § 119.02, any public officer who knowingly violates the provisions of Fla. Stat. § 119.07(1), is subject to suspension and removal or impeachment, and is guilty of a misdemeanor of the first degree punishable as provided in Chapter 775, Fla. Stat.
3. Fla. Stat. § 119.10(2) (2003) provides that any person who willfully and knowingly violates any of the provisions of Chapter 119 is guilty of a misdemeanor of the first degree, punishable as provided for in Chapter 775, Fla. Stat.
4. However, pursuant to Fla. Stat. § 119.10(3) (2003), any person who willfully and knowingly violates Fla. Stat. § 119.105 (that provides for the protection of victims of crimes or accidents) commits a felony of the third degree, punishable as provided in Chapter 775, Fla. Stat.
5. In the case of State v. Webb, 786 So.2d 602 (Fla. 1st Dist. App. 2001), rev. den. 807 So.2d 656 (Fla. 2002), the court concluded that the dilatory responses of a school board member to the public records requests of a parent did not comport with the requirement of Fla. Stat. § 119.07(1), for the “reasonable” access to public records. In this case, the school board member responded to the initial public records request one and one-half months later, but did not schedule a time for the parent to review the documents until four months had passed. At that time, the parent was only allowed one hour to review a large stack of documents, and then allowed only two additional one-hour review sessions some five weeks later. The school board member terminated the parent’s review of the records after the third session. Finally, the school board member did not provide all of the public records requested until after she received a request from the grand jury nearly seven months after the initial request.

J. Award of Attorney's Fees.

1. The public entity will be held responsible for all costs including attorney’s fees in obtaining records which are deemed to be discloseable under Chapter 119, including those fees and costs at trial or at appeal. Fla. Stat. § 119.12(1) (2003).
2. Further, whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such agency. Fla. Stat. § 119.12(2) (2003).

3. In News and Sun-Sentinel Co. v. Palm Beach County, 517 So. 2d 743 (Fla. 4th Dist. App. 1987), the court held that attorney fees were recoverable in an action to obtain access to public records, even where the access was denied based upon good faith but mistaken belief that the documents involved were exempt from disclosure. See also Times Publishing Co., Inc. v. St. Petersburg, 558 So. 2d 487, 495 (Fla. 2d Dist. App. 1990) (intent of the statute is to reimburse a party who incurs legal expenses when seeking permission to view records wrongfully withheld, even if access is denied based on a good faith but mistaken belief that the documents are exempt).
4. A form of “good faith” exception has been upheld in limited situations involving private businesses or organizations acting on behalf of the government agency. For example, in Harold v. Orange County, 668 So.2d 1010 (Fla. 5th Dist. App. 1996), the court declined to award attorney’s fees because the private contractor’s, who was acting on behalf of the county, noncompliance with a public records request was done in “good faith” and was not an unlawful act. The Fifth District Court relied on the Florida Supreme Court’s ruling in New York Times Co. v. P.H.H. Mental Health Services, 616 So. 2d 27 (Fla. 1993) when the court stated:

This case involves the question of whether a private entity acting on behalf of a public agency is responsible for attorney’s fees under section 119.12(1), Florida Statutes (1987), when that entity reasonably and in good faith denies a chapter 119 request to inspect records because the private entity’s status as an agency under the meaning of chapter 119 is unclear. We find that under such circumstances the private entity’s denial of the request does not constitute an unlawful refusal under section 119.12(1), and an award of attorney’s fees is not appropriate.

668 So.2d at 1012.
5. Similarly, in the case of Stanfield v. Salvation Army, 695 So.2d 501 (Fla. 5th Dist. App. 1997), the court found that a party was not entitled to attorney’s fees, where a private organization’s refusal to disclose records was based on a good faith belief that it was not subject to the public records law.
6. Once litigation has commenced to enforce compliance with Chapter 119, subsequently providing the records sought will not avoid the assessment of costs and fees. Wisner v. City of Tampa Police Department, 601 So. 2d 296 (Fla. 2d Dist. App. 1992).
7. In Weeks v. Golden, 764 So.2d 633 (Fla. 1st Dist. App. 2000), the court determined that an unjustified failure to respond to a public records request until after an action was

commenced to compel compliance, amounted to an unlawful refusal for purposes of the law allowing for recovery of reasonable costs.

8. In the case of Barfield v. Town of Eatonville, 675 So.2d 223 (Fla. 5th Dist. App. 1996), the court determined that the party requesting the public records was entitled to recover attorney's fees and costs incurred in gaining the access to the records, where the records previously sought by written request were turned over only after the lawsuit was filed. The Court further found that an unjustified delay in complying with a public records request, whether by intentional wrongdoing or by ineptitude, amounted to an "unlawful refusal," thus allowing for the recovery of attorney's fees and costs incurred in requesting the documents.
9. In Knight Ridder, Inc. v. Dade Aviation Consultants, 808 So. 2d 1268 (Fla. 3d Dist. App. 2002), the court found that airport consultant had no reasonable or good faith belief in refusing to produce public records of its payments to lobbyists, and thus the newspaper was entitled to attorney fees for action to enforce the Public Records Act, where consultant attempted to withhold records by raising, both before and during the litigation and in both the trial court and appellate court, one flimsy and transparent excuse after another in defense of its position, a pattern of conduct which amounted to stonewalling.
10. In Downs v. Austin, 559 So. 2d 246, (Fla. 1st Dist. App. 1990), rev. den. 574 So.2d 140 (Fla. 1990), the court liberally construed the provisions of Fla. Stat. § 119.12, to allow attorney's fees at the trial level after an appellate ruling overturned the trial court decision. The court found that the provision in Fla. Stat. § 119.12 for an award of appellate fees when an agency unsuccessfully appeals an order granting access did not bar a plaintiff from obtaining appellate fees for successfully appealing a denial of access.
11. No parallel right to attorney's fees is available under a request for (and order of disclosure of) documents pursuant to Chapter 415, Fla. Stat., regarding investigation of a nursing home. Department of HRS, State of Florida v. Martin, 574 So. 2d 1223 (Fla. 3d Dist. App. 1991). The Third District Court of Appeal held that the statute which authorized disclosure of records to a personal representative did not authorize an award of attorney's fees and costs.