

2-A-0 | SCOPE OF THE PUBLIC RECORDS ACT

Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge. Access to public records has been described as a "cornerstone of our political culture." In re Report & Recommendations of Judicial Mgmt. Council of Fla. on Privacy & Elec. Access to Court Records, 832 So. 2d 712, 713 (Fla. 2002).

Section 119.011(2), F.S., defines "agency" to include:

any 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.

A right of access to records is also recognized in Art. I, s. 24, Fla. Const., which applies to virtually all state and local governmental entities, including the legislative, executive and judicial branches of government. The only exceptions are those established by law or by the Constitution.

Section 119.011(12), F.S., defines "public records" to include:

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.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open

for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). Exemption summaries are found in Appendix D.

The term "public record" is not limited to traditional written documents. As the statutory definition states, "tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission" can all constitute public records. And see *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010) ("public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form"). Cf. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying....").

Clearly, as technology changes the means by which agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet, the comprehensive scope of the term "public records" will continue to make the information open to public inspection unless exempted by law.

Article I, s. 24, Fla. Const., establishes a constitutional right of access to 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 those records exempted pursuant to Art. I, s. 24, Fla. Const., or specifically made confidential by the Constitution. See *State ex rel. Clayton v. Board of Regents*, 635 So. 2d 937 (Fla. 1994) ("[O]ur Constitution requires that public officials must conduct public business in the open and that public records must be made available to all members of the public."); and *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) ("A citizen's access to public records is a fundamental constitutional right in Florida"). The complete text of Art. I, s. 24, Fla. Const., the Public Records and Meetings Amendment, may be found in Appendix A.

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