

2-D-1 | VALIDITY OF AGENCY CONDITIONS ON ACCESS

Section 119.07(1)(a), F.S., establishes a right of access to public records in plain and unequivocal terms:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

The term "reasonable conditions" as used in s. 119.07(1)(a), F.S., "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979).

See also *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1084 (Fla. 4th DCA 2014) (noting the narrow interpretation of the phrase "reasonable conditions"); and *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

Accordingly, the "reasonable conditions" do not include a rule or condition of inspection which operates to restrict or circumvent a person's right of access. AGO 75-50. "The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records" under Ch. 119, F.S. Inf. Op. to Cook, May 27, 2011. And see *State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (requirement that persons with custody of public records allow records to be examined "at any reasonable time, under reasonable conditions" is not unconstitutional as applied to public records custodian who was dilatory in responding to public records requests).

The Public Records Act "embodies important public policy" and "is designed to provide citizens with a simple and expeditious method of accessing public records." *Orange County v. Hewlings*, 152 So. 3d 812, 817 (Fla. 5th DCA 2014). Thus, an agency violated the Act when instead of complying with Hewlings' "simple request" for records, it "chose to interpose the additional bureaucratic



hurdles of forcing her to come to its offices, comb through the records, mark the records in a certain manner, wait for a written estimate of costs, then, after paying the costs, wait again for the records to be mailed to her." Id.

The custodian "is at all times responsible for the custody of the [public] records but when a citizen applies to inspect or make copies of them it is his duty to make provision for this to be done in such a manner as will accommodate the applicant and at the same time safeguard the records." Fuller v. State ex rel. O'Donnell, 17 So. 2d 607 (Fla. 1944). Thus, the right of inspection may not be frustrated or circumvented through indirect means such as the use of a code book. State ex rel. Davidson v. Couch, 158 So. 103, 105 (Fla. 1934) (right of inspection was "hindered and obstructed" by city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). Accord AGO 05-12 (city may not require the use of a code to review e-mail correspondence of city's police department and human resources department). And see Inf. Op. to Cook, May 27, 2011, noting that "[a] policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian's duty to protect public records from alteration or destruction, but to impose additional constraints on the requestor." Compare Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018) (state attorney did not violate the Public Records Act by making requested records available for inspection and copying at the main office of the state attorney, rather than at a branch office closer to the requester's home, because the Public Records Act "does not require government officials to move records from where they are being maintained to a different place convenient to the requester").

Moreover, any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. Tribune Company v. Cannella, supra at 1077. A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S., a general law. Douglas v. Michel, 410 So. 2d 936, 938 (Fla. 5th DCA 1982), questions answered and approved, 464 So. 2d 545 (Fla. 1985). And see AGO 90-04 (county official not authorized to assign county's rights to a public record as part of a settlement agreement compromising a lawsuit against the county). Cf. Herbits v. City of Miami, 207 So. 3d 274, 275 (Fla. 3d DCA 2016) (claim based on alleged concealment of information in



violation of transparency mandates established in local enactments is preempted by the Florida Public Records Act, because the "Florida Legislature has so pervasively legislated regarding this subject area that a local government is precluded from legislating in the same area.").

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