

2-D-14 | AMOUNT OF TIME ALLOWED FOR RESPONSE TO PUBLIC RECORDS REQUESTS

a. Duty to Acknowledge Requests Promptly

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), F.S. Cf. *Hewlings v. Orange County*, 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county's 45-day delay in complying with the request was unjustified for purposes of s. 119.12, F.S., authorizing an award of attorney's fees to a party who succeeds in a civil action resulting from an unlawful refusal to provide public records).

b. Automatic Delay Impermissible

A policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078-1079 (Fla. 1984), appeal dismissed sub nom., *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985). And see *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332, 333-334 (Fla. 1st DCA 2015) (agency not authorized to automatically delay production by imposing a 24-hour notice requirement).

Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records. *Tribune Company v. Cannella*, 458 So. 2d at 1078. Compare s. 1012.31(3)(a)3., F.S., in which the Legislature has expressly provided that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified as prescribed by statute.

Similarly, the Attorney General's Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote. AGO 96-55. And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).



c. Unjustified Delay

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, "delay in making public records available is permissible under very limited circumstances." *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA, 2014). In *Promenade*, the court noted that a records custodian could delay production to determine whether the records exist, s. 119.07[1][c], F.S.; if the custodian believes the some or all of the record is exempt, s. 119.07[1][d]-[e]; or if the requesting party fails to forward the appropriate fees, s. 119.07[4], F.S. Otherwise, the only delay in producing records permitted under Ch. 119, F.S., "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Id.* at 983, citing *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985). Where the delays aren't justified, "the Public Records Act holds officials accountable." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018).

Thus, an agency's unjustified delay in producing public records constitutes an unlawful refusal to provide access to public records. See *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). See also *State v. Webb*, 786 So. 2d 602, 604 (Fla. 1st DCA 2001) (error for a lower court judge to vacate a misdemeanor conviction of a records custodian [Webb] who had been found guilty of willfully violating s. 119.07(1)(a), F.S., based on her "dilatory" response to public records requests).

For example, in *Promenade D'Iberville, LLC v. Sundy*, supra, the appellate court determined that an agency violated the Public Records Act by refusing to provide non-exempt public records until a court denied its motion for a protective order to block the requestor (an adversary in out-of-state litigation) from using the Act. Similarly, a trial judge erred by granting the agency's motion to dismiss on the grounds that the agency ultimately provided the record three months after the request was made and two weeks after the request



for mandamus relief had been filed. *Consumer Rights, LLC v. Bradford County, Florida*, 153 So. 3d 394, 398 (Fla. 1st DCA 2014). Instead, the judge should have conducted a hearing to determine whether the delay was justified. *Id.*

By contrast, in *Lang v. Reedy Creek Improvement District*, No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), affirmed per curiam, 675 So. 2d 947 (Fla. 5th DCA 1996), available online in the Cases database at the open government site at myfloridalegal.com, the circuit court rejected the petitioner's claim that the agency should have produced requested records within 10, 20 and 60-day periods. The court determined that the agency's response to numerous (19) public records requests for 135 categories of information and records filed by the opposing party in litigation was reasonable in light of the cumulative impact of the requests and the fact that the requested records contained exempt as well as nonexempt information and thus required a considerable amount of review and redaction. And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, in which the court said that in view of the "nature and volume of the materials requested [over 9000 pages], their location, and the need for close supervision by some knowledgeable person of the review of those records for possible exemptions," the amount of time expended by the county to produce the records (several weeks) to opposing counsel was not unreasonable.

Moreover, recent cases have emphasized that in order for a delay to constitute an "unlawful refusal" for purposes of the award of attorney's fees under s. 119.12, F.S., the delay must be "unjustified." See e.g., *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015), review denied, 177 So. 3d 1264 (Fla. 2015) and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016). See also the discussion on pages 196-200 relating to attorney's fees awarded under s. 119.12, F.S., for an "unlawful refusal" to provide access to public records.

Stated another way, the Public Records Act "demands prompt attention and a reasonable response time, not the quickest-possible response." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). In *Siegmeister*, the court noted that the agency had not "intentionally or unjustifiably delayed

responding" to a public records request because it took two weeks for the response to be delivered to the requester. Id. at 74. Cf. *Florida Agency for Health Care Administration v. Zuckerman, Spaeder, LLP*, 221 So. 3d 1260, 1264 (Fla. 1st DCA 2017) (trial court abused its discretion by issuing a writ of mandamus requiring health care agency to produce a large number of public records within 48 hours when the records could not be reviewed for redaction of exempt information within this "compressed time period;" trial court also erred by requiring the agency to produce the records prior to the requester's payment of the agency's invoices associated with production of the records).

d. Arbitrary Time for Inspection

The Public Records Act authorizes inspection and copying of public records "at any reasonable time." Section 119.07(1)(a), F.S. While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332 (Fla. 1st DCA 2015). Accord AGO 81-12 (custodian not authorized to establish an arbitrary time period during which records may or may not be inspected).

There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible. Inf. Op. to Riotte, May 21, 1990, concluding that an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act.

e. Standing Requests

The Attorney General's Office has stated that upon receipt of a public records request, the agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, F.S. However, this mandate applies only to those documents in the custody of the agency at the



time of the request; nothing in the Public Records Act appears to require that an agency respond to a so-called "standing" request for production of public records that it may receive in the future. See Inf. Op. to Worch, June 15, 1995.

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