

2-E-3 | RETROACTIVE APPLICATION OF NEW EXEMPTIONS

Access to public records is a substantive right. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Id.* Generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies. *Baker County Press, Inc. v. Baker County Medical Services*, 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004).

However, if the Legislature is "clear in its intent," an exemption may be applied retroactively. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), review denied, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). See also *Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017); *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986); and *Roberts v. Butterworth*, 668 So. 2d 580 (Fla. 1996). Cf. *Cebrian By and Through Cebrian v. Klein*, 614 So.2d 1209 (Fla. 4th DCA 1993) (amendment to child abuse statute limiting access to unfounded reports was remedial in nature and therefore applied retroactively); AGO 11-16 (applying exemption to a public records request received before the statute's effective date because the legislation creating the exemption states that it "applies to information held by an agency, before, on, or after the effective date of this exemption"); and AGO 94-70 (amendment to expungement statute appears to be remedial and, therefore, should be retroactively applied to those records ordered expunged prior to the effective date of the amendment).

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