

2-D-12 | REQUESTS TO CREATE NEW RECORDS, ANSWER QUESTIONS ABOUT THE RECORDS, OR REFORMAT EXISTING RECORDS

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. Section 119.07(1) (a) and (4), F.S. However, a custodian is not required to give out information from the records of his or her office. AGO 80-57. The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. AGO 92-38. Cf. In re Report of the Supreme Court Workgroup on Public Records, 825 So. 2d 889, 898 (Fla. 2002) (the custodian of judicial records "is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request").

In other words, Ch. 119, F.S., provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Thus, the clerk of court is not required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991). See also AGO 08-29. Cf. s. 120.53, F.S., relating to maintenance of final orders by agencies subject to Ch. 120, F.S.

However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Wootton v. Cook*, *supra*. See also *Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records. Cf. *Gilliam v. State*, 996 So. 2d 956 (Fla. 2d DCA 2008) (clerk, as custodian of judicial records, had a legal duty to respond to Gilliam's request for information regarding costs) and *Blackshear v. State*, 115 So. 3d 1093 (Fla. 1st DCA 2013) (clerk is "dutybound to respond to a request about copying costs for the records sought").

Similarly, as stated in *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982), review denied, 431 So. 2d 988 (Fla. 1983), the intent of Ch. 119, F.S., is "to make available to the public



information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." Accordingly, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. AGO 08-29. As explained in Seigle:

If the health department maintains a chronological list of dog-bite incidents with rabies implications [a] plaintiff, bitten by a suspect dog, may not require the health department to reorder that list and furnish a record of incidents segregated by geographical areas. Nothing in the statute, case law or public policy imposes such a burden upon our public officials. 422 So. 2d at 65.

Thus, in AGO 97-39, the Attorney General's Office concluded that a school district was not required to furnish electronic public records in an electronic format other than the standard format routinely maintained by the district.

Despite the general rule, however, the Seigle court recognized that an agency may be required to provide access through a specially designed program, prepared by or at the expense of the requestor, where:

- 1) available programs do not access all of the public records stored in the computer's data banks; or
- 2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or
- 3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or
- 4) the court determines other exceptional circumstances exist warranting this special remedy. 422 So. 2d at 66-67.

For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium that is not routinely used by the agency, or if it elects to compile information that is not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4), F.S. (authorizing imposition of a special service

charge if extensive information technology resources or labor are required). Section 119.01(2)(f), F.S.

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