

## Access to Public Records in Florida

The Public has a statutory right to inspect a vast number of government records under Florida's Public Records Act. The act states that "all state, county, and municipal records are open for personal inspection and copying by any person." §119.01, Fla. Stat. (2016).

### What Types of Records Can Be Requested

The public is entitled to inspect and copy "public records," including all documents, maps, tapes, photographs, films, sound recordings, data processing software, or other material, made or received pursuant to law or in connection with the official business of any agency. §119.011(11).

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). Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." Op. Att'y Gen. Fla. 04-33 (2004).

Records created on home computers or personal cell phones are public records if the record is made or received in connection with the transaction of official business. §119.011(12). This includes emails and texts. These records must be preserved in accordance with records retention schedules. *Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4<sup>th</sup> DCA 2011).

Records in existence at the time of the request must be provided. If a requested record does not exist, the Program has no duty to create it.

### What Exemptions Might Apply?

Chapter 39 Confidentiality provisions: Florida Statute section 39.0132 governs confidentiality of records held by the Guardian ad Litem Program in dependency cases. Specifically, subsection (4)(a) (2), governs the GAL and provides:

2. a. The following information held by a guardian ad litem is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
  - (I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.
  - (II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

Subsection (4)(b) further provides an exemption for certain designated individuals, "[s]uch confidential and exempt information may not be disclosed...except upon order of the court." In addition, the source of the information held by the GAL Program does not control the question of its confidentiality.

Attorney Work Product: A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings is exempt **until the conclusion of the litigation or adversarial administrative proceedings.** 119.071(d)(1)

**A NOTE ABOUT ATTORNEY CLIENT PRIVILEGE:** The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). *See also City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (§90.502, of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119.).

Gal Volunteer: The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. 119.071(4)(d)2.h.

### **How to Request Records in Florida**

Records can be requested over the telephone, in person or in writing. No reason for the request has to be given. If you receive a verbal request for records you should ask the person making the request if they will submit it in writing to help ensure the accuracy of the response. There is no prescribed form for the request.

Per statute, the request should be addressed to the ‘‘custodian of public records’’ The GAL custodian is Debra Ervin. If you receive a public records request, you should immediately send it to her. While the Public Records Act does not compel agencies to respond to requests within a specific time limit, but the courts have held that an agency is required to respond within a "reasonable" time to locate the records and redact exempt portions. Fla. Stat. § 119.07(1)(a), (c).

**Records Retention** Section 119.921(2)(a) requires the Division of Library and Information Services of the Department of State to adopt rules establishing retention schedules and a disposal process for public Records. The GAL Program is governed by schedule GS1-SL. Retention of court records are governed by Court rules and the Rules Regulating The Florida Bar. If the time period for retention set forth in the Rules Regulating The Florida Bar conflict with schedule GS1-SL, the longer time period for retention should be followed

Prior to the destruction of any records, you should consult with Administrative Services.

### **What Are Remedies Available in Florida**

If an agency denies a public records request, or takes an unreasonably long time to respond, the requesting party may seek mediation through the Office of the Attorney General Open Government Mediation Program; file a complaint with the local state attorney or file a writ of mandamus in court to challenge the agency's denial and enforce compliance. If successful, the party seeking the records is entitled to attorney's fees.

- Noncriminal Infraction - A public officer who violates the public record law may be subject to a noncriminal infraction punishable by a fine up to \$500.
- Criminal Penalty - A knowing violation of the Public Records Law constitutes a first degree misdemeanor, punishable by possible criminal penalties of one year in prison, or \$1,000 fine or both.

**Pending Legislative Changes:** An amendment to the act is currently before the legislature. That amendment would eliminate the need for the GAL to take reasonable steps to protect their records.