MAJOR INITIATIVE 3: ENSURE THAT FLORIDA'S EDUCATION SYSTEM HAS THE HIGHEST QUALITY LEADERSHIP

ISSUE: GOVERNMENT-IN-THE-SUNSHINE LAWS

SUMMARY POINTS

- Florida's Sunshine Law, Chapter 286, Florida Statutes, provides a right of access to governmental meetings and protects the public from "closed door" decision making. The Public Records Law, Chapter 119, F.S., creates a right of access to records made or received in connection with official business of a public body.

- The Law applies to all meetings of "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision."

- The Law requires:
  - All meetings must be open to the public, although there is no right to public participation;
  - Reasonable notice of meetings' time, place and agenda must be given;
  - Any voting of members must be done in public;
  - Minutes of meetings must be recorded, kept and open to public inspection.

- Meetings include any discussions or deliberations, formal or casual, between two or more members about a matter on which the board might foreseeably take action, including workshops, telephone conversations, e-mail communications, social, sports events and other public gatherings.

- Exemptions to the law can only be granted by the Legislature, based on criteria identified in the Open Government Sunset Review Act of 1995. The Attorney General has made clear, however, that exemptions are to be "narrowly construed."

- There are statutory exemptions which remove some education records from disclosure, such as: donors to direct-support educational organizations, school personnel records, limited-access records maintained by a state university and educational records of individual students.

- The most active current debate under freedom-of-information policies is the amount of information that institutions/boards should be required to disclose about searches for new executives. Increasingly, universities and school boards are retaining independent executive search firms to carry out the selection process.

GOVERNMENT-IN-THE-SUNSHINE LAWS

A National Overview

The federal government and all states have open meeting laws, often referred to as "sunshine laws," that require agency officials to hold certain meetings in public. These laws do not necessarily ensure that members of the public will be allowed to address the agency, but they do guarantee that the public and the media can attend the meetings

At the federal level, sunshine laws cover multimember agencies and federal advisory committees. State laws apply to a variety of commissions, boards and councils. Generally, sunshine laws guarantee public access to meetings only when a quorum of a multimember group meets to discuss public business. Chance social or ceremonial gatherings of agency officials usually do not fall within the scope of these laws. However, merely having food at the meeting does not make it a social gathering if the agency is meeting to discuss public issues and make decisions. The statutes usually require agencies to give advance notice of all meetings, even emergency ones, and to publish or post agendas in advance, listing items to be discussed. Agencies must keep minutes and/or transcripts of all meetings, even those that agencies can legally close to the public.

Every state allows agencies to conduct certain discussions in closed or "executive" sessions. However, agencies usually must refrain from formal action unless in public session. The kinds of meetings the agencies may close vary somewhat from state to state, but most laws permit them to conduct the following discussions in private:

- Personnel matters - particularly where the agency is firing, hiring or disciplining an individual employee (in some cases, the employee has the right to request a public hearing).
- Collective bargaining sessions.
- Discussions with agency attorneys regarding pending or imminent litigation involving the agency.
- Discussion of the acquisition or sale of public property.

Open meeting statutes usually specify the procedures agency officials must follow to close a meeting. In some states, votes to close meetings must take place in open session. In other states, simply giving notice of the intent and reasons for holding a closed meeting is sufficient.

As under freedom of information laws, the public and media may seek redress in the courts for violations of open meeting laws. In some states, courts or statutes will nullify actions taken in violation of the open meetings law, requiring the agency to take the action again in an open meeting. In other states, government officials may be liable for criminal or civil fines for deliberate violations.

State Commissions

State commissions are uniformly subjected to open meeting laws, although specific named commissions in certain states may be exempted on an individual basis. Absent a specific statutory definition, a “commission” is a public body officially appointed and empowered to perform certain acts or exercise specific jurisdiction of a public nature.

Relatively little litigation has occurred concerning the application of open meeting laws to state commissions. Many commissions were required to meet publicly prior to enactment of the open meeting laws or did so by tradition. For illustration, specific commissions that have been subjected to the open meeting requirements include:

- Civil rights commissions, and other commissions charged with protecting the rights of individuals.
- Public service and public utilities commissions.
- Tax commissions.
- Corporation and commerce commissions.
- State lottery, racing or gaming commissions.
- State ethics commissions and similar bodies.
- Ad-hoc commissions studying government reorganization.

State Educational Institutions

State boards of education are often within the scope of the open meeting laws. Universities, colleges and other state educational institutions of various sorts are frequently subject to open meeting laws. State educational institutions have been the subject of a disproportionate amount of open meeting act litigation.

Open meeting laws and court and attorney general opinions have identified the following state educational entities that may be required to obey the open meeting laws:

- The governing bodies of public institutions of higher learning.
- Departments within a university.
- Search committees for new deans, faculty, etc.
- Other committees.
- The faculty, acting as a collegial body. Tenure hearings may or may not be required to be open, either by including or excluding the tenure hearing specifically, by including or excluding the body that conducts the hearings or by deeming tenure hearings to be within the exception permitting executive sessions for personnel matters.
- Athletic associations and councils.
- Nonprofit corporations operating for the benefit of a public university or college or the public schools.
- Student government associations and organizations.
- Other associations, committees and entities that are associated with or part of public universities and schools.

The Current Climate

Nationwide, there continues to be periodic clashes between public college and school officials with the media, and the public at large, over access to meetings and records. Application of open meeting laws to school boards and schools often presents a tension between the public interest in open government and the privacy rights of particular students and teachers whose individual circumstances are at issue. This tension has been addressed in most states by permitting executive

sessions when the public body considers individuals whose privacy interests would be affected by public discussion. Executive sessions are used by school boards to do strategic planning, to promote team building and to evaluate the work of board/superintendent teams and of one another, but not to take action regarding district policy matters.

In a number of states, lawsuits alleging violations of state freedom-of-information acts are pending against public colleges. College officials in certain states are working to curtail, or limit the expansion of, open records or open meetings laws. These efforts are focusing on three types of information: the identities of candidates for college presidencies who may be deterred from applying if their interest will be publicized; the identities of donors to colleges who often insist on remaining anonymous; and the details of proprietary research on campuses.

The most active issue is the amount of information that institutions should be required to disclose regarding searches for new presidents. Over 20 states have adopted exceptions to their freedom-of-information laws that permit public colleges to withhold names of all but a few finalists in their presidential searches. Legal holdings argue that state open meetings laws infringe upon the constitutional right of a university's governing board to manage the institution. National surveys have found, however, that most university presidential searches continue to be conducted with a high degree of confidentiality, despite the fact that most of the states have laws that require the searches to be open.

Universities and school districts that desire greater levels of confidentiality in executive searches are now employing independent, third party search firms to conduct the process outside of the public domain. These external firms act on behalf of the institution, however, and all records remain accessible to the public. At the end of the search process, a small list of recommended candidates is provided to the institution/district board for the final employment decision.

In recent years, bills have been filed in the Florida Legislature that have attempted to amend the disclosure requirements for state university presidential searches, citing the view that the Sunshine Law has a negative impact on the willingness of some potential candidates to consider application for senior positions in the System. Thus far, however, these efforts have been unsuccessful.

Since the attacks of September 11, 2001, freedom-of-information laws and policies have been placed under scrutiny by state legislatures, driven by worries that terrorists could use even routine information to plan attacks or escape capture. At least 20 states have proposed legislation that addresses the issue of open records, according to statistics provided by the National Conference of State Legislatures. The laws would keep secret a wide range of documents ranging from evacuation plans and emergency response plans to security measures and/or emergency health procedures. The 2003 Florida Legislature passed a bill that clarified that security system plans of a public or private entity, which plans are held by an agency, are confidential and exempt from the public record requirements.

Across the country, there is also discussion at the local level about what should be included in the public record. Some states are looking to control counties that have made public too much information on the Internet. Open-government advocates, however, have warned that a sweeping approach to anti-terrorism measures would block a key element of democratic society — public scrutiny of government.

Florida's Government-in-the-Sunshine Law

Definition and Key Components

- Florida's Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. It applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is also a constitutionally guaranteed right of access. Virtually all state and local collegial public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access.
- Florida's Sunshine Law, Chapter 286, F.S., requires that all meetings for the transaction of official business by all public boards and agencies at all levels of government must be open to the public at all times in the absence of a specific statutory exemption granted by the Legislature. The law applies to all appointed and advisory boards as well as those that are elected. It applies to any meeting, including a "workshop session" or "briefing session" at which public business is discussed, so long as the meeting forms an integral part of the decision-making process.
- The Sunshine Law is generally limited to collegial bodies whose members share equal authority and act through the concurrence of two or more members.
- Reasonable notice must be given of a meeting which is subject to the Sunshine Law. What is reasonable depends upon all of the circumstances in a given situation.
- Minutes must be promptly recorded and opened for inspection to members of the public.
- All votes must be taken in the open and must be recorded and all members of the board or commission who are present must vote unless a declaration of conflict is made on the record.
- Any acts passed in violation of the Sunshine Law become void.
- The Public Records Law, Chapter 119, F.S., creates a right of access to records made or received in connection with official business of a public body.
- Public records are all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, and data processing software, regardless of physical form or means of transmission, made or received in connection with transaction of official business by the agency.
- The Open Government Sunset Review Act of 1995 provides procedures for certain exemptions from the Sunshine Law, based on the following criteria:
    - The exempted record or meeting is of a sensitive, personal nature concerning individuals;
    - The exemption is necessary for the effective and efficient administration of a governmental program; or
    - The exemption affects confidential information concerning an entity.

- There are statutory exemptions which remove some education records from disclosure, such as:
    - Identifying donors to direct-support organizations associated with education agencies.
    - School personnel records such as complaints against staff, employee evaluations, employee payroll deduction records and medical records.
    - Limited-access records maintained by a state university or community college that include academic evaluations and records relating to employee misconduct.
    - Testing materials on students.
    - Educational records of individual students.

- The Office of the Attorney General makes clear, however, that "as a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed."

- Any person who is a member of a board or commission, a state agency or authority or a county, municipal corporation or political subdivision who knowingly violates the public meeting provisions of the Sunshine Law is guilty of a misdemeanor of the second degree. Any public officer who violates any provision of the Sunshine Law is guilty of a non-criminal infraction which is punishable by a fine of up to $500.

Historical Overview

1909 – Public Records Law (Chapter 119, Florida Statutes) was enacted to enable citizens to have virtually unlimited access to the records of government. This law provides that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Legislature.

1967 - Government-in-the-Sunshine Law (Chapter 286, Florida Statutes) was enacted. The Sunshine Law established a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.

1990 – A constitutional amendment was passed overwhelmingly by the voters providing for open meetings in the legislative branch of state government.

1991 - An important legal opinion was published by the Attorney General that addressed whether district school boards were subject to the Sunshine Laws when discussing confidential material, such as information relating to student expulsion hearings. The opinion reaffirmed that meetings of a district school board are subject to the requirements of the Sunshine Law in the absence of a specific exemption from the statute even though confidential material may be discussed. The opinion also recognized, however, that existing statutes specifically provide that, upon request of a parent, guardian or student, such a hearing can be exempt from the requirements of the Law.

1992 – As a result of a 1991 Supreme Court decision that was viewed to threaten the people's right to know, a constitutional amendment was passed that, not only guaranteed continued openness in the state's government but also, served to reaffirm the application of open government to the legislative branch and expand it to the judiciary.

Legal Challenges*

I. The following selected legal cases represent public education cases in Florida during the past decade in which public officials either pleaded no contest or guilty to or were convicted of criminal or civil charges under Florida's Open Records or Open Meetings Law.

- **School Board Member Withholds Records** – May 1999 – June 2003
  - Rulings:
    - May 1999 - An Escambia County School Board member served time for violating Florida's Public Records Law. The school board member argued that she could not turn over the requested documents because they contained confidential student information. She was sentenced to 11 months and 15 days in jail and ordered her to pay a $1,000 fine for knowingly withholding public records from a parent who had been critical of her and her politics. However, the judge suspended all but 30 days of the sentence. The Governor suspended the school board member indefinitely .
    - November 1999 – The board member was acquitted by an appellate judge and sued the school board to recover $188,000 in legal fees.
    - June 2001 - An appeals court panel reinstated the conviction and remanded the case back to Escambia County, saying that the board member admitted that the files she withheld were public records.
    - June 2003 - the prosecution decided that they will not retry the board member.
- **Entire board charged with violating open meetings law** – August 1992
  - Ruling: A grand jury indicted the entire Hernando County School Board for multiple alleged violations of the Open Meetings Law occurring over a two-year span. Individual board members were charged with criminal and two non-criminal charges.
  - In December 1992, a Hernando County judge found one board member guilty of one misdemeanor count of violating the Open Meetings Law. She was fined $322 and ordered to pay court costs and spend four hours reading the Government-in-the Sunshine Manual. The member pleaded no contest to the other 12 misdemeanor and 2 non-criminal charges during her trial. The Governor removed the member from office, but changed his order to a suspension after the Florida Supreme Court said he did not have authority to remove her from office. Subsequently, the Florida Senate voted in March 1994 not to reinstate the member. Other board members pleaded no contest to charges in January 1993. As part of their pleas agreements, they agreed to study the Open Meetings Law.

II. The following selected legal cases on public education issues represent cases during the past decade in which plaintiffs obtained litigation expenses in legal actions filed under the Florida Public Records and Open Meetings Law.

- **Access to government information** – July 1999
    - Ruling: A circuit court judge ordered that the Escambia County School Board members to attend a seminar about access to government information and pay the plaintiff $904.92 in expenses after failing to provide school board members' e-mails and an e-mail address book to a parent.
- **Documents related to spending of a gift** – July 1997
    - Ruling: A circuit court judge ordered the President of Florida Atlantic University to pay attorneys' fees of $8,595.90 and taxable costs of $533.40 to a plaintiff in her public records lawsuit. The president had been sued for the release of documents related to the spending of a $10 million gift to the university. In a previous ruling, the court ordered the president to release the documents.
- **Violation of public notice of a meeting** – May 1997
    - Ruling: The 3rd District Court of Appeal ruled that a Miami-Dade Community College committee's recommendation to award a contract was void because the panel violated the Open Meetings Law. The court said that a committee appointed by the college purchasing director to review and rank proposals for providing flight-training services at Kendall-Tamiami Airport was subject to the Open Meetings Law. Because the committee failed to give the public notice of its meetings, it violated the law. The subsequent decision to award a contract to Husta International Aviation Inc. was void.
- **Closed school board meetings** – November 1996
    - Ruling: The Duval County School Board agreed to pay *The Florida Times-Union* $25,000 for attorneys' fees in a court action filed by the paper seeking the release of transcripts of closed school board meetings. In 1995, the 4th Judicial Circuit Court ruled that the meetings should have been open to the public and ordered the release of the transcripts. The ruling was upheld in 1996 by the 1st District Court of Appeal.
- **Refusal to release a survey commissioned by the board** – September 1996
    - Ruling: The Palm Beach County School Board agreed to pay $39,000 in attorneys' fees and court costs to resolve a public records action filed by the Fort Lauderdale *Sun-Sentinel* and *The Palm Beach Post*. The 4th District Court of Appeal had upheld a judgment against the School Board awarding attorneys' fees and court costs incurred by the newspapers in a public records lawsuit. The 15th Judicial Circuit Court had ruled that the board violated the Public Records Law by refusing to release a survey that was commissioned by the board and conducted by a private research company. The Court awarded the newspapers $30,163 in attorneys' fees and court costs and ordered the research company to pay an additional $345.
- **Inspect and Copy City Documents** – October 1994
    - Ruling: Following a court order commanding the City of St. Petersburg to permit St. Petersburg Junior College to inspect and copy certain documents, a 6th Judicial Circuit court awarded the college attorneys' fees incurred in the court action.

- **Foundation financial records kept secret** – December 1993
    - Ruling: *The Palm Beach Post* won $55,222 in attorney's fees and court costs from the Palm Beach Community College Foundation, which had tried to keep its financial records secret, arguing that it was not covered by the Public Records Act.
- **Refusal to provide copies of a proposal** – July 1993
    - Ruling: The Palm Beach County School District paid $2,800 in legal fees and costs to *The Palm Beach Post* for refusing to provide copies of a proposal to settle a grievance filed by its former lawyer.
- **School construction and fire inspection records** – March 1993
    - Ruling: The Clay County School District and Superintendent were required to pay $5,500 in fees incurred by Florida/Tampa Television, Inc. (WFLA-TV Channel 8, Tampa) and its reporter as part of a settlement agreement. The reporter and WFLA sought school construction and fire inspection records.
- **Foundation financial records** – April 1993
    - Ruling: The 4th District Court of Appeal affirmed a circuit court's ruling that the Palm Beach Community College Foundation's financial records are open to the public and affirmed an award of attorneys' fees and court costs to *The Palm Beach Post*. A Palm Beach circuit judge had ruled that the foundation had to open its financial records to the public and ordered the foundation to pay the Post's attorneys' fees.
- **School board closed-door meetings** - June 1992
    - Ruling: The Osceola School Board settled a public records dispute with *Orlando Sentinel* . The paper agreed not to collect attorney's fees awarded by the trial judge and the school board agreed to drop its appeal and to open all meetings concerning public business. An Osceola County circuit judge had ruled that the school board violated the Sunshine Law and ordered the board not to hold any more closed-door meetings. The circuit court also awarded more than $15,000 in attorneys' fees to the *Orlando Sentinel* in the ruling, which the school board had appealed.

*Source: *Florida Public Records and Open Meetings Laws Attorneys' Fees and Prosecutions Database*
The Brechner Center for Freedom of Information
University of Florida

Legal Opinions**

The following selected legal opinions offered by the Florida Attorney General during the past decade on issues of public education as related to Florida's Sunshine Laws serve as legal advice on questions of statutory interpretation.

- **Community college advisory council** - June 2003
    - Issue: Advisory councils, created by community colleges to make recommendation to college's business assistance center and to the college president, subject to Sunshine Law, Section 286.011, F.S.
    - Opinion: Yes, advisory councils, while their powers are limited to making recommendations to a public agency and possess no authority to bind that agency, are subject to the Sunshine Law.
- **Meeting of university presidents** - February 2002
    - Issue: Applicability of Sunshine Law to meetings of association of university presidents.
    - Opinion: Sunshine Law applies to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by that board or commission. If the State University Presidents Association operates as a collegial body for incipient decision making, then the association would be subject to the Sunshine Law.
- **School advisory committee** – December 2001
    - Issue: School advisory committee members subject to criminal penalties for knowingly committing a violation of the Sunshine Law.
    - Opinion: Members of school advisory councils are subject to the criminal penalties for knowingly violating the Sunshine Law.
- **Advisory redistricting committee** – September 1999
    - Issue: Discussions between school board member(s) and advisory redistricting committee member(s) notice.
    - Opinion: While notice of the school redistricting advisory committee meeting must be provided, a school board member may attend an advisory committee meeting without prior notice.
- **School advisory council, faculty meetings** – February 1995
    - Issue: In faculty meetings, are faculty members that are also school advisory council members allowed to participate in general discussion of school issues, solicit their views, guidance, direction, or direction.
    - Opinion: Faculty/staff meetings that are incidentally attended by two or more members of the school's advisory council are not public meetings that must be noticed, if the council members refrain from discussing between or among themselves issues that may come before the council for consideration. Additionally, the individual school advisory council members who conduct information gathering

at faculty meetings would not be subject to the Sunshine Law, as long as the individual member has not been authorized to exercise decision-making authority on behalf of the school advisory committee.

- **School advisory committees** – February 1994
    - Issue: Applicability of Sunshine Law to meetings of schools' agenda preparation group and superintendent's executive management team.
    - Opinion: When a committee has been established strictly for, and conducts activities only for gathering and reporting information, the activities of the committee are not subject to the Sunshine Law.
- **Faculty on school advisory council** – March 1994
    - Issue: Does the Sunshine Law apply to members of a school advisory council who are also faculty members or school administrative officials who are also parents.
    - Opinion: The discussion of matters that may be under consideration by the council by school personnel and parents when performing their day-to-day responsibilities as school personnel or as parents, rather than members of the school advisory council would not necessarily be subject to the Sunshine Law.

**Source: http://myfloridalegal.com/opinions

APPENDIX

Florida Office of the Attorney General:

Frequently Asked Questions

The following questions and answers on Florida's Open Government Laws are provided by the Office of the Attorney General http://myfloridalegal.com/sunshine and are intended to be used as a reference only.

Q. What is the Sunshine Law?

A. Florida's Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. It applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is also a constitutionally guaranteed right of access. Virtually all state and local collegial public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access.

Q. What are the requirements of the Sunshine law?

A. The Sunshine law requires that 1) meetings of boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given, and 3) minutes of the meeting must be taken.

Q. What agencies are covered under the Sunshine Law?

A. The Government-in-the-Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision." Thus, it applies to public collegial bodies within the state at both the local as well as state level. It applies equally to elected or appointed boards or commissions.

Q. Are federal agencies covered by the Sunshine Law?

A. Federal agencies operating in the state do not come under Florida's Sunshine law.

Q. Does the Sunshine Law apply to the Legislature?

A. Florida's Constitution provides that meetings of the Legislature be open and noticed except those specifically exempted by the Legislature or specifically closed by the Constitution. Each house is responsible through its rules of procedures for interpreting, implementing and enforcing these provisions. Information on the rules governing openness in the Legislature can be obtained from the respective houses.

Q. Does the Sunshine Law apply to members-elect?

A. Members-elect of public boards or commissions are covered by the Sunshine law immediately upon their election to public off ice.

Q. What qualifies as a meeting?

A. The Sunshine law applies to all discussions or deliberations as well as the formal action taken by a board or commission. The law, in essence, is applicable to any gathering, whether formal or casual,

of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law.

Q. Can a public agency hold closed meetings?

A. There are a limited number of exemptions which would allow a public agency to close a meeting. These include, but are not limited to, certain discussions with the board's attorney over pending litigation and portions of collective bargaining sessions. In addition, specific portions of meetings of some agencies (usually state agencies) may be closed when those agencies are making probable cause determinations or considering confidential records.

Q. Does the law require that a public meeting be audio taped?

A. There is no requirement under the Sunshine law that tape recordings be made by a public board or commission, but if they are made, they become public records.

Q. Can a city restrict a citizen's right to speak at a meeting?

A. Public agencies are allowed to adopt reasonable rules and regulations which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of the public attending. This includes limiting the amount of time an individual can speak and, when a large number of people attend and wish to speak, requesting that a representative of each side of the issue speak rather than every one present.

Q. As a private citizen, can I videotape a public meeting?

A. A public board may not prohibit a citizen from videotaping a public meeting through the use of nondisruptive video recording devices.

Q. Can a board vote by secret ballot?

A. The Sunshine law requires that meetings of public boards or commissions be "open to the public at all times." Thus, use of preassigned numbers, codes or secret ballots would violate the law.

Q. Can two members of a public board attend social functions together?

A. Members of a public board are not prohibited under the Sunshine law from meeting together socially, provided that matters which may come before the board are not discussed at such gatherings.

Q. What is a public record?

A. The Florida Supreme Court has determined that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. They are not limited to traditional written documents. Tapes, photographs,

films and sound recordings are also considered public records subject to inspection unless a statutory exemption exists.

Q. Can I request public documents over the telephone and do I have to tell why I want them?

A. Nothing in the public records law requires that a request for public records be in writing or in person, although individuals may wish to make their request in writing to ensure they have an accurate record of what they requested. Unless otherwise exempted, a custodian of public records must honor a request for records, whether it is made in person, over the telephone, or in writing, provided the required fees are paid. In addition, nothing in the law requires the requestor to disclose the reason for the request.

Q. How much can an agency charge for public documents?

A. The law provides that the custodian shall furnish a copy of public records upon payment of the fee prescribed by law. If no fee is prescribed, an agency is normally allowed to charge up to 15 cents per one-sided copy for copies that are 14" x 8 1/2" or less. A charge of up to $1 per copy may be assessed for a certified copy of a public record. If the nature and volume of the records to be copied requires extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the actual cost incurred.

Q. Does an agency have to explain why it denies access to public records?

A. A custodian of a public record who contends that the record or part of a record is exempt from inspection must state the basis for that exemption, including the statutory citation. Additionally, when asked, the custodian must state in writing the reasons for concluding the record is exempt.

Q. When does a document sent to a public agency become a public document?

A. As soon as a document is received by a public agency, it becomes a public record, unless there is a legislatively created exemption which makes it confidential and not subject to disclosure.

Q. Are public employee personnel records considered public records?

A. The rule on personnel records is the same as for other public documents ... unless the Legislature has specifically exempted an agency's personnel records or authorized the agency to adopt rules limiting public access to the records, personnel records are open to public inspection. There are, however, numerous statutory exemptions that apply to personnel records.

Q. Can an agency refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the documents?

A. No. To allow the maker or sender of documents to dictate the circumstances under which documents are deemed confidential would permit private parties instead of the Legislature to determine which public records are public and which are not.

Q. Are arrest records public documents?

A. Arrest reports prepared by a law enforcement agency after the arrest of a subject are generally considered to be open for public inspection. At the same time, however, certain information such as the identity of a sexual battery victim is exempt.

Q. Is an agency required to give out information from public records or produce public records in a particular form as requested by an individual?

A. The Sunshine Law provides for a right of access to inspect and copy existing public records. It does not mandate that the custodian give out information from the records nor does it mandate that an agency create new records to accommodate a request for information.

Q. What agency can prosecute violators?

A. The local state attorney has the statutory authority to prosecute alleged criminal violations of the open meetings and public records law. Certain civil remedies are also available.

Q. What is the difference between the Sunshine Amendment and the Sunshine Law?

A. The Sunshine Amendment was added to Florida's Constitution in 1976 and provides for full and public disclosure of the financial interests of all public officers, candidates and employees. The Sunshine Law provides for open meetings for governmental boards.

Q. How can I find out more about the open meetings and public records laws?

A. Probably the most comprehensive guide to understanding the requirements and exemptions to Florida's open government laws is the Government-in-the-Sunshine manual compiled by the Attorney General's Office. The manual is updated each year and is available for purchase through the First Amendment Foundation in Tallahassee. For information on obtaining a copy, contact the **First Amendment Foundation at (850) 224-4555**.