

# FLORIDA PUBLIC RECORDS LAW

---



# What is a Public Record?

- All documents..... regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency
- Intended to Perpetuate, Communicate or Formalize university knowledge

# Examples of Public Records:

- Drafts documents circulated for comment
- Correspondence
- Email
- Text Messages
- Voice mails?

# What is Not a Public Record?

- Personal notes not filed in official files
- Draft documents not circulated for comment

# Location of Document

- Physical location of document is irrelevant to determining status
- Public record status is determined by the content of the document
- Personal email on university computer= Not a public Record
- Work email on private computer =Public Record

# What Records are Confidential/Exempt from the Public Records Law?

- Direct Support Organization Records- Confidential AND Exempt
- Student Education Records- Florida Statutes incorporate FERPA
- Testing Materials

- Audit notes, work papers and Report until Report is finalized.
- Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation” until such time as the agency provides notice of an intended decision or until 30 days after opening “the bids, proposals, or final replies,” whichever is earlier

- Emergency Evacuation Plans
- Audit notes, work papers and Report until Report is finalized.
- Sealed bids or proposals, until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, whichever is earlier



- Discrimination complaints :until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of a hearing or court proceeding.
- The name or identity of a whistleblower unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation

- Active Criminal Investigative and Intelligence Information
- Building plans and blueprints of university buildings

- Attorney Work Product- But only if
  1. prepared by university attorney or prepared at her express direction;
  2. Reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency; and
  3. Prepared exclusively for litigation or administrative proceedings, or
  4. in anticipation of imminent civil or criminal litigation or administrative proceedings
- Exempt only until the conclusion of the litigation or adversarial administrative proceeding

- Collective Bargaining
  - Work Product developed in preparation for negotiations and during negotiations
- Investigations
  - Information reflecting academic evaluations of employee performance
  - Identify of complainant alleging sexual harassment
  - Investigations of employee misconduct, employee grievances, but only until conclusion of investigation

- Trade Secrets
  - The whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.
  - Document must be marked as trade secret at the time transmittal.

- University Research
  - Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information received, generated, ascertained, or discovered during the course of research conducted within the state universities.
  - Must produce title and description of a research project, the name of the researcher, and the amount and source of funding provided for the project

# Records that are NOT Exempt

- Employee information : Salary, address, phone number, etc.
  - Exceptions:
    - Social Security number, health information , Bank account/Debit and credit card numbers, retirement accounts, law enforcement personal information
- Law Enforcement Records other than active criminal investigation.
- Computer Security Plans
- Business Expansion Plans – EDC

# Responding to a Public Records Request

- Who can Request a Public Record?



ANYONE

# What Conditions can we place on a Request?

- Very Few
- We cannot:
  - Ask for name of requestor
  - Ask the purpose of request
  - Require a form to be filled out
  - Require request in writing

# Responding to a Public Records Request

- The "Custodian" of a public record has the duty to produce a document within a "reasonable time" upon request
- Custodian = All university personnel who have it within their power to release or communicate public records
- The university can designate one or more persons to respond to public records requests.

- News and Information- Media requests
- Institutional Knowledge- Statistical data
- Purchasing- Procurement documents
- Personnel Records- HR
- Legal issues- General Counsel
- Business activities- Business Services
  
- General Counsel advises on exemptions for all requests.

- University only has to produced existing documents
  - No requirement to create documents
  - Requests for future documents are not valid- i.e. “Standing Request”
  - Not required to provide online access to documents

# What fees can be charged for responding?

- Generally must be produced without charge except for copies
- Statute authorized the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both
- “Extensive” is not defined – We typically use one hour
- Calculated using hourly rate including benefits

# Consequences of Non-Compliance

- University assessed attorneys fees for unlawful refusal to produce a public record
- Public officer who knowingly violates the law is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both

# Retention of Public Records

- Division of Library and Information Services of the Department of State has adopted rules establishing retention schedules for public records.
- General Records Schedule
- Universities Records Schedule
- <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>
- Schedules based on content of document, not form



## Examples of Retention Periods

Retain until obsolete, superseded or Administrative value lost

- Transitory Email
- Operational/Statistical Reports

Three Year Retention

- Paper/Email Correspondence- General

- Five Year Retention:
  - Paper/Email Correspondence regarding policy
  - Promotion and Tenure
  - Admission Records
  - Discipline Records

- Ten Year Retention
  - Contracts
  - Disbursement Records
  - Capital Improvement Records