

HOW DOES FLORIDA'S SUNSHINE LAW AFFECT YOU?

Whether it's day-to-day operations or a crisis situation, a city government is required to follow public records laws. In a crisis, events are constantly changing and decisions need to be made quickly. It's important to remember that just about every document you produce will remain a public record long after the event is over, and it will be available for closer inspection by the media and the public.

Florida's Sunshine Law is a series of statutes intended to guarantee that the people of Florida have access to meetings and records of their government. The 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."

Public records cover all types of documents used by a government during the course of everyday business, including: papers, photos, letters, film, maps, documents, computer records, books, data processing software and sound recordings.

The Florida Supreme Court has determined that public records include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge. In recent years, text messages, emails and other electronic forms of communication have been added to the list of what is considered to be a public record.

The Sunshine Law requires boards or commissions to meet in public. Those government bodies are not permitted to take action or engage in private discussions regarding public business via written correspondence, emails, text messages or other electronic communications. In the 2012 edition of *Public Record: A Guide for Law Enforcement*, Florida's Attorney General offered the following advice regarding electronic communications:

- **Email:** Email messages made or received by an agency employee in connection with official business are public records and subject to disclosure in the absence of an exemption. Those email messages are to be treated like other public records and are subject to the statutory restrictions on destruction of public records.
- **Facebook:** As more local governments turn to social media sites as a way to get their messages to a technologically savvy public, they are raising new questions about public records laws and social networking. The Attorney General's Office has stated that "the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S., although in any given instance, the determination would have to be made based upon the definition of 'public record' contained in s. 119.011(12), F.S. To the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established in accordance with s. 237.36(6), F.S.12 d."
- **Text messages:** In an opinion to the Department of State (which is charged with developing public record retention schedules), the Attorney General's Office advised that the "same rules that apply to email should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies." The Department of State revised its records retention schedule to reflect that text messages may be public records and that retention of text messages could be required depending upon the content of those texts.

In the heat of the moment during a crisis situation, it might be convenient to quickly send a text message or email without reviewing it carefully. Did you say something inappropriate? Is everything you're saying completely accurate? Did you reveal sensitive or personal information that did not need to be included? Remember: These messages are public record and are required to be retained based on the opinion of Florida's Attorney General.

Again, your words will last long after the event is over. When the crisis has ended and reporters are looking for follow-up stories, they may very well make public records requests to determine what happened as the event was unfolding. They will see your words, as you wrote them amid an urgent situation. In short, don't say or write anything that you wouldn't want to see on the front page, either tomorrow or at some point in the future.