

Public Records Requests for Soil and Water Conservation Districts

A Soil and Water Conservation District (SWCD) is required to provide public records as an agency subject to the public records laws in Chapter 119 (the Sunshine Law). According to the Attorney General, the purpose of the Sunshine Law is to afford citizens the ability to see behind the curtain of government and remain involved in the processes that affect their lives.

[http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GNQTW/\\$file/2014SunshineLawManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GNQTW/$file/2014SunshineLawManual.pdf).

Sunshine Law violations can result in \$500 fine and attorney's fees and court costs, FS 119.12, 119.10(1)(a).

Recommendations: AFCD recommends that every SWCD adopt a Public Records Request procedure to ensure that SWCD's are protected by having policies in compliance with the legal requirements set out in the Florida Statutes and case law.

DEVELOP PROCEDURES FOR:

1. This procedure describes how SWCD's should respond to requests from members of the public to inspect and/or copy public records that are in the custody of the District. For purposes of this procedure government agencies are not members of the public and requests from such agencies do not need to be handled under this procedure.
2. Public Record Defined – Any document or paper or electronic media, regardless of physical form, characteristic or means of transmission, including electronic mail, made or received in connection with official business are public records. This includes all calendars, notes and correspondence, including email correspondence, if the item is related to District business.
3. Records that are not Public Records – Personal notes, personal or “spam” emails, and those preliminary draft documents that are only for the author's use are not public records and are not required to be provided in response to a public records request.
4. Exemptions – There are many types of documents that are exempt from disclosure. A complete listing of exempt documents is available on line in an abridged version at <http://myfloridalegal.com/sun.nsf/manual>. If you have questions about whether a record is exempt check with the attorney for the District or appropriate personnel. Some examples are
 - a. Social security numbers.
 - b. Personal financial information, such as credit card and bank account numbers.
 - c. Data processing software subject to licensing agreement.
 - d. Sealed bids or proposals received in response to invitations to bid until notice of the decision or intended decision is given or 10 days after bid or proposal opening, whichever is earlier.
 - e. Security system plans, threat response plans, emergency evacuation plans, sheltering arrangements, and manuals for security personnel, emergency equipment, or security training.
 - f. Building plans or diagrams that depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure.

5. Some records may be partially exempt, in which case the exempt information must be redacted and the balance of the non-exempt record provided. If extensive redaction is required, provide notice to the requestor that the records are being redacted. This will require input from legal counsel.

PROCESSING PUBLIC RECORDS REQUESTS

1. How Requested—public records requests may be made by telephone, in person or by any written means. A specific form cannot be required. Requiring a record to be made in a particular format can be a violation and result in fines and legal fees. **Chandler v. City of Green Acres, 140 So. 3d 1080 (Fla. 4th DCA 2014).**
2. Identification—the District cannot require a person to identify himself or herself or to state a reason for requesting public records in order to be entitled to inspect and copy them – unless required by law, or the records are confidential or entitled to exemption and the requestor claims entitlement to view the records.
3. Clarify request—to clarify the request, ask for it to be in writing, or offer to confirm the request by fax or email. If the person does not want to be identified or have the request reduced to writing, simply enter the request in a log created for this purpose. **Dade Aviation v Knight Ridder, 800 So. 2d 302, 305 n.1 (3d DCA 2001)** (public records requests do not need to be in writing). The request cannot be required to be in writing. If an oral request is broad, explain the cost of the request and the potential number of records encompassed by the request and inquire about narrowing the request.
4. Consider using a public records request log for all non-written requests. Include the date of the request; the name of the requestor if identified; and a general description of the records requested.
5. Record creation not required—the Sunshine Law does not mandate that an agency create records to accommodate a request for information. In addition, an agency is not generally required to reformat its records to meet a requestor’s particular needs. Any such request should be referred to the public records contact person designated by the District. **AGO 80-57** (does not have to give out information from records), **AGO 92-38** (does not have to answer questions regarding records), In re Report of the Supreme Court Workgroup on Public Records, **825 So. 2d 889, 898 (Fla. 2002)**(custodian of 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”), and **Wootton v. Cook, 590 So. 2d 1039(Fla. 1st DCA 1991).** See also **AGO 08-29** (agency not required to create list in response to request for information).
6. Information about records not required—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.**
7. Copy to central contact person—Determine whether you want to notify and provide a copy of any written request to a central public records contact person.
8. Forward to correct responder—If a request is not addressed to the appropriate department, the recipient should forward the request the same or next day to the appropriate employee and inform the Public Records Contact Person. Delays from passing record requests among departments may be considered unaccepted and result in litigation and sanctions.
9. The public records contact person may designate another employee to coordinate a response.

10. Estimate charges— Before responding to the request, make an estimate of the charges and notify the requestor of the amount of the charge in writing (if possible) and obtain advance payment before producing the documents.
11. Special service charges— If the response will require more than 15 to 30 minutes of staff time to comply, consult with the public records contact person to calculate the special service charge. The amount of service charge time that triggers must correlate to the amount of time an average response takes. This cannot be a rote or fixed time period, but one which can be justified by some finding supporting this average amount of time. Include this finding in your procedure, such as “the average public record request takes staff about 15 minutes to complete.” This may be distinguished from a fee assessed for staff to act as custodian of the records for a person to photograph records with his or her own equipment or for an extended period of time to review records for an extended period of time.
12. If the request involves pending litigation involving the District, consult with legal counsel before responding to the request.
13. If the request is from a member of the news media, coordinate with the public relations officer.
14. Confidential and Exempt records — if the request appears to include confidential or exempt records, discuss the records request with legal counsel. Failing to provide a record thought to be exempt, which is not exempt, can expose the District to liability, so consultation with counsel or appropriate personnel is crucial. Refer to NRCS procedures or policies to determine what is confidential or exempt.
15. Redaction— if redaction is required, redact the exempt portion of the document manually or electronically in a way that completely protects the exempt information before including in the response documents. It is best to address exempt information before providing the documents so that the party receiving the documents can raise any objection to the redaction. There is case law involving various agencies providing redacted documents or refusing to produce documents and then having to litigate the issue.
16. Response time — While the Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests, the custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. If the response cannot be promptly provided, send a letter by regular mail or email to the requestor acknowledging the request and explaining why additional time is needed. Provide a copy to the public records contact person before sending.
17. For large volume requests, coordinate with the public records contact person for viable records reproduction alternatives, such as sending records out for copying, using a scanning service, or uploading the documents to a web link. Any plan to use an outside service must incorporate security of the records.
18. Electronic records—any request for electronic records must be referred to the information systems director. The fee for providing computer generated information is the actual cost to the department for programming the information or report.
19. Format of record—if the requestor asks for the record in a particular format, and your office stores it in that format, you must provide it in that format. **AGO 91-61**. If you do not store it in that format, you have the option of providing in that format and assessing a fee to convert it, but it is not a requirement, so only convert the record to the requested format if it is practicable.
20. Vague requests—if a request is vague, a designated public records contact person can contact the requestor to clarify the request.

21. Inspections—there is no charge for routine inspections by a public records requestor. A routine inspection involves less than 15 or 30 minutes of staff time as pre-determined to be an average public records request response time. An employee must monitor all inspections, though such monitoring can be while conducting other routine tasks within close proximity to the inspection to prevent records from being lost or destroyed during the inspection. Records can only be inspected during regular business hours. A person requesting to scan the requested records can do this with their own scanner or can take pictures with camera. **119.07(3)(a), Fla. Stat.** You cannot charge for these copies, **AGO 82-23**, but you can charge for clerk time to supervise the review of records, **Section 119.07(4)(e)2., Fla. Stat.**, using the salary (plus benefits) for the lowest-paid person capable of performing the job, as long as that person is not doing other work and charging only for actual time. A prepayment of the estimate of time can be required. If the supervising staff person is doing other work, do not charge.

22. Fees must be paid in full prior to copying and producing the requested material. **FL 119.07(4)**. Fees are payable by check or money order depending on your local office procedure.

23. CHARGES FOR PHOTOGRAPHIC COPIES

The charge for photographic process copies is \$.15 per page and \$.20 per page for double-sided copies, **FS 119.07(4)(a)**; postage is an additional cost that can be charged.

24. CHARGES FOR ELECTRONIC DOCUMENTS—

a. **FS 119.07(3)(4)(a)1.**, authorizes a charge of “up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches....”

b. Regardless of what per page fee rate is chosen, each District should also set a policy on the delivery method of electronic documents. This can be using a disk, a thumb drive, email, etc.

Unless other sufficient security measures are in place, consider requiring only District-provided media to prevent viruses or other electronic damage being done to the network infrastructure. For any physical media used, the charge for scanning and putting copies on the device is the per-page rate, plus THE ACTUAL COST OF THE DEVICE. Postage can be additionally charged. This cannot be an arbitrary flat rate. Discs and thumb drives can only be charged at the actual cost of the device, which means the actual cost of the material and supplies. Associated labor costs or overhead costs associated with such duplication cannot be assessed unless it is extraordinary. If it is extraordinary, be sure that the time is billed as extraordinary services, not as “labor” or “overhead.” If copies or duplication must be outsourced, the actual cost from the outside company can be charged, but not the transportation or salary costs associated with getting the duplication accomplished. Unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by **s. 119.07(4)(d), Fla. Stat.**, an agency may charge only the actual cost of duplication for copies of computerized public records. **AGO 99-41**.

c. A supervisory fee can be charged at a rate of compensation to be agreed between the requestor and the custodian, if they fail to agree, the charge shall be determined by the custodian. **FS 119.07(4)(e)2. Note: there is no authority to charge an hourly photocopying fee. See Jacksonville Police & Fire Pension v. Lee, (Fla. SC13-1315 April 14, 2016 opinion, pg 4)**, remanded for award of attorney’s fees.

d. A room fee if another room is needed to photograph records. **FS 119.07(4)(e)1.**

e. Each District can determine whether there is a minimum number of documents or pages

before the office will charge a fee.

25. Other agencies, state, county or city, requesting copies of records are subject to the copy charges established by this policy.

26. If paper copies are mailed, add the postage or shipping costs to the total charge.

27. EXTENSIVE SERVICE CHARGE-The imposition of an extensive service charge is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. **AGO 99-41 and AGO 2013-03 fn 5**. Extensive research or service time must be billed at the hourly rate (plus benefits) of the lowest-paid person capable of performing the job. For example, if information technology services are required to compile data, bill at the hourly rate for the lowest-paid technology person who is capable of performing this job. An office can choose to have a higher-paying person actually do the job, but the requestor can only be billed at the lower rate. Establish the time that the average request takes to perform, and use that standard to set the minimum research time to assess extensive research/service services.

Example: Extensive research services shall be charged for research services that require more than 30 minutes of time. Average research time on a public records request is 15 minutes or less. Each request needing extensive services must be evaluated on the nature of the request to determine what level of staff is needed to review. For example, if only an attorney can do the review, then that rate can be used, but if the research can be handled by a lower-paid staff person, then that person's hourly rate (plus benefits) must be used, regardless of who actually handles the request.

28. Provide a receipt when payment of the charge is made. If the final charge is less than the advance, refund the difference. If the final charge is more than the advance, request final payment before releasing the records.

29. When the records are provided complete the public records request log either manually or electronically. Such logs allow the District to keep tabs on the timeliness of responses.

30. Redaction—If information is confidential, it cannot be released, see **WFTV v School Board of Seminole County, 874 So. 2d. 48 (5th DCA 2004)**. Federal Law applies only if state is clearly subject to the provisions of the statute, **State v Pace, 159 So. 679 (Fla. 1935)**. If information is exempt, but not confidential, agencies may allow access, but do not have to, see **Williams v City of Minneola, 575 So. 2d 683 (5th DCA 1991)**, see also FSC unpublished PCA. A records custodian cannot charge for redaction.

39. Suggested Form — a Public Records Request Log is attached as a sample log.

PUBLIC RECORDS REQUESTS (THE SHORT VERSION)

1. Do not ignore any public records request, regardless of how it was received.
2. Acknowledge receipt of the request to the requestor immediately.
3. As soon as possible, locate the records. Estimate how long it will take to copy the records.
4. Communicate to the requestor the time it will take to comply, and what the cost will be.
5. Make arrangements for the payment.
6. If payment is to be received before copies are to be made, wait until payment arrives.
7. As soon as payment arrives, notify the requestor as to when the copies will be ready.
8. Provide copies.

9. If someone just wants to look at the records, you must allow it during your regular business hours, and you cannot charge.

Remember, you don't have to create records. If it is not a record that you are required to make, you don't have to provide it.

You do not have to explain the contents of the records, just provide copies.

If the record was not there at the time the current officeholders or staff began work, the correct response is; "the requested records were not present at the time the current administration assumed office. As we have no knowledge of the whereabouts or existence of the requested records, we are unable to provide copies."

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) 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, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed,

no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.