PUBLIC RECORDS OVERVIEW

October 3, 10, 2017
This presentation is posted at:
http://www.flsheriffs.org/webinars/
Constitutional Right of Access

- Art. 1 §24, Fla. Const. “Every person has the right to inspect or copy a public record made or received in connection with the official business of any public body, officer or employer of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section...or specifically made confidential...”

“Every person who has custody of a public record shall permit the record to be inspected and copied...at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”
§119.011(12), F.S., defines "public records" to include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, 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.
(1) All materials
(2) made or received pursuant to law or ordinance or
    in connection with the transaction of official business
(3) By any agency including a private entity acting on behalf
    of a public agency
(4) which are used to perpetuate, communicate or formalize
    knowledge

- All such materials regardless of whether they are in final form, are open
  for public inspection unless the legislature has exempted them from
  disclosure
- *Shevin v. Bryon, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d. 633,
  640 (Fla. 1980)
Retention of Public Record

- Public records must be retained in accordance with the schedules set forth by the Florida Department of State – Division of Library and Information Systems
  - http://dlis.dos.state.fl.us/recordsmgmt/
- There are hundreds of retention periods contained within the applicable schedule
- Destruction prior to expiration of retention period is a violation of the law
- Documents need not be retained in original format
  - E.g., okay to scan and keep electronically
Email

- Personal email, even on a government computer is not a public record
  - *State of Fla. v. City of Clearwater*, 963 So.2d 149 (Fla. 2003)
    - “Personal email” is email that is “not made or received pursuant to law or ordinance or in connection with the transaction of official business”

- Official business emails are public records
  - Regardless of the computer on which it was created, or the server that it is on
    - *Butler v. City of Hallandale Bch.*, 68 So.2d 278 (Fla. 4th DCA 2011) – “the determining factor is the nature of the record {email} not its physical location”
Text Messaging

- Treat text messages like emails for public records purposes
- AG Informal Opinion (3/17/10)
  - AG letter to Secretary of State asking for retention schedules to be updated to provide text messages
  - The same rules that apply to email should be considered for smart phones PIN and Text
- General Records Retention Schedule GS1-SL V revised to include text messaging, et. al.
  - “Printouts of electronic communications (e-mail, instant messaging, text messaging, multimedia messaging, chat messaging, social networking, or any other current or future electronic messaging technology or device) are acceptable in place of the electronic files, provided that the printed version contains all date/time stamps and routing information”
Social Media

- Social media sites are subject to same public records laws
  - Facebook pages, friends lists, postings, etc. are all public record (AGO 09-19)
  - Twitter messages – outgoing and incoming by agency are public record

- Social Media communications by agency officials on their personal accounts involving agency business?
AG Informal Opinion  7/17/03
• Documentation of an officer’s agency issued cell phone number is public record – does not fall within the exemption in §119.071(4), F.S.
• “Business telephone numbers used to contact law enforcement officers, whether providing access to a desk telephone at the officer’s workplace or to a cellular telephone carried by the officer while performing his or her official duties, would be public record”
Booking Photos

- Booking photos are generally considered non-exempt public record which must be disclosed.

- HOWEVER, if the active criminal investigation exemption, or any other exemption, is still applicable it would not be subject to disclosure.
§985.04(2)(a)2, F.S.

- Public records custodian has discretion to publish booking photos of juvenile charged with felony or transferred to adult court.
- Arrest records, photos are public records
Booking photos are generally considered non-exempt public record; however,

- If a law enforcement officer requests exemption of his/her photo under §119.071(4)(d), F.S., the booking photo of an arrested police officer would be exempt from disclosure
  - *FOP, Lodge 5-30 v. City of Jacksonville* (4th Jud. Cir. 2001)
  - *Sarasota Herald-Tribune Co. v. Sarasota County Sheriff’s Office* (12th Jud. Cir. 1996)
- Because the photo is not related to their work, the exemption only applies if they specifically claim it and is not automatic
Inmate Phone Calls

  - Purely personal phone calls of inmates are not public record
  - Only phone calls that involve a crime or security risk fall within definition of public record
  - Logs of phone numbers called would be public record
    - Subject to any other exemptions from disclosure as applicable
Confidential Records may not be disclosed except as permitted by statute
  • Juvenile Offenders, Criminal Histories, Baker Acts
  • Pre-employment psych evaluations
  • Protected medical information

Exempt: Records may be disclosed, but are not required to be disclosed
  • Active criminal investigative information, Confidential Informants, Confessions
  • Law Enforcement Personnel home addresses and phone numbers
  • Security System Plan
§119.071(2)(c)1, F.S.

- “Active Criminal Investigative Information” is exempt from disclosure
- “Criminal investigative information” is defined as “information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports or investigators or informants, or any type of surveillance”
To be Considered “active” such information must relate to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future”

If the material that otherwise would constitute active criminal investigative information is turned over to the accused in the criminal discovery process, the exemption no longer applies and the material would need to be disclosed

• *Post-Newsweek Stations v. DOE*, 612 So.2d 549 (Fla. 1991);
  *Fla. Freedom Newspapers v. McCrary*, 520 So.2d 32 (Fla. 1988)
Active Criminal Intelligence Information (exempt)

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

- Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
§119.011(3)(c)1, F.S.

- Time, date, location and nature of reported crime, and crime charged, excluded from exemption

*Barfield v. City of Tallahassee*, 171 So.3d 239 (Fla. 1st DCA 2015)

- Email of Facebook post to Tallahassee Police Dept. requesting alleged domestic violence incident to be investigated subject to public records request because some of the information in email included time, date, location and nature of reported crime
§112.532(4)(b) and 112.533(2)(a), F.S., make complaints filed against officers and information obtained during investigation confidential and exempt until conclusion of the investigation.

• Determination that no discipline to be imposed, or
• Determination that discipline will be imposed
  • Pre-disciplinary conference

§119.071(2)(k), F.S., investigations against employees, including civilians, are confidential pending conclusion
Acknowledging investigation:

- §112.533(4), F.S. confidentiality doesn’t prohibit Sheriff, chief or designee from acknowledging the existence of complaint and ongoing investigation
FCHR/EEOC Investigations

- §119.071(2)(g)1., F.S.
  - Complaints and related records concerning complaints of discrimination are exempt until a finding is made of probable cause, the investigation becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding
Scenario 1

- A member of the public walks into the jail lobby and asks to inspect visitor logs for previous week. These records are maintained electronically in the secure area of the jail. He declines to give identification.

- Visitors logs are public records; printed copies may be provided for inspection; no I.D. may be required.
Scenario 2

- A member of the public sends an anonymous email requesting salary records of the command staff.

- If a record detailing salaries exists, it should be provided. If salaries are documented in individual payroll files, those documents should be produced. A special service charge may be required if the time spent is excessive.
A public records request asks for documentation of arrests of all juveniles in the past 12 months, by gender, race and age.

Assuming no single record exists, an estimate may be provided of reviewing and producing all current reports for juveniles in the past 12 months.
Scenario 4

- A public records request asks for a copy of the Sheriff’s 2017 calendar, which is kept by the Sheriff’s Executive Assistant.

- Because the calendar is used to schedule official events and meetings, it is a public record. Personal matters may be redacted.
A sheriff’s office is conducting a criminal investigation of the county administrator for using inmate labor to work on his personal residence. The investigation is based on an anonymous written complaint detailing dates, names of inmates, and work performed. The local newspaper requested a copy of the complaint relating to the investigation.

A copy of the complaint may be provided with all information redacted except for the dates, location (administrator’s address), nature of reported crime (misuse of office) and crime charged (misuse of office).
THIS POWERPOINT IS A PUBLIC RECORD
Wayne Evans
General Counsel, FSA
Allen, Norton & Blue, P.A.
850-561-3503 (o)
850-766-0945 (c)
revans@anblaw.com