



**Public Records and
Government in the Sunshine
Learner Course Guide**
FY 2014-2015

To protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts.



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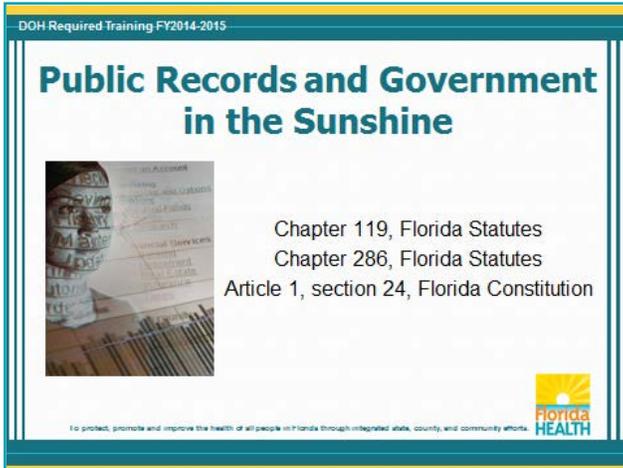


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Slide 1 – Title Slide



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Public Records and Government in the Sunshine



Chapter 119, Florida Statutes
Chapter 286, Florida Statutes
Article 1, section 24, Florida Constitution

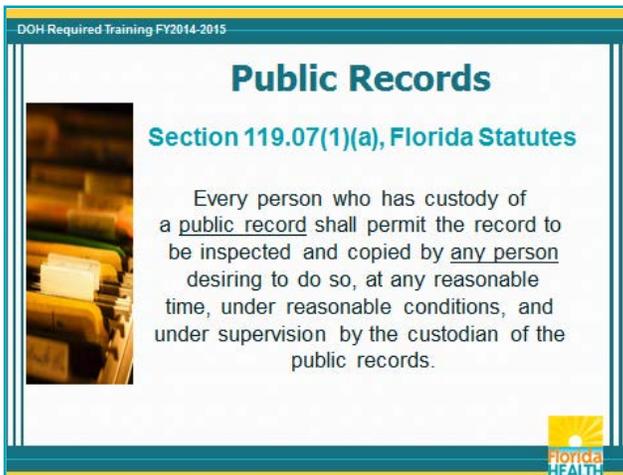


To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

Welcome to the Public Records and Government in the Sunshine Training.

The purpose of this training is to give you basic information about Florida's open government laws.

Slide 2 – Public Records



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Public Records

Section 119.07(1)(a), Florida Statutes



Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.



We are going to start with Public Records.

Section 119.07(1)(a), of the Florida Statutes mandates that every person with custody of a public record shall permit the record to be inspected and copied by any person, at any reasonable time, under reasonable conditions, and under supervision of the records custodian.

Slide 3 – Public Records II

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Public Records



- Public records act is construed liberally in favor of openness.
- Exemptions are construed narrowly and limited in their purpose.
- Agency has burden of showing that the requested documents are exempted from disclosure and must cite the specific statute or law indicating the record is exempt.
- If the person seeking disclosure of a record prevails in a court case, the agency generally must pay costs and attorney's fees.



The public records act is construed in favor of openness while exemptions are construed narrowly and limited.

If it is unclear whether something is a public record or falls within a specific exemption of the public records laws, there is a higher likelihood that the record will be public than not. If a person seeks disclosure of agency records, the burden is on the agency to show that a record is exempt from disclosure.

The agency must cite the specific statute or law that requires the record to be withheld from disclosure.

If the agency loses in a court action seeking disclosure of the record, the agency is usually ordered to pay court costs and attorney's fees to the person seeking disclosure.

Slide 4 – Requesting Records

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Requesting Records



- Public records are available to any person who requests them.
- No purpose or reason needs to be given for requesting the records.

Refer public records requests to:
The Office of Public Records Requests in the Office of General Counsel at 850-245-4005



Any person may request a public record.

A person does not need to provide a reason for requesting records, they don't need to explain their purpose, they don't need to give a justification.

The agency can charge reasonable fees for providing the records, but cannot require a person requesting records to explain why they want them.

If you receive a request for public records, refer the request to the Office of Public Records Requests in the Office of the General Counsel at 850-245-4005.

Slide 5 – What is a Public Record?

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What is a Public Record?



- Made or received pursuant to law or ordinance.
- Or in connection with the transaction of official business of the agency.
- Used to perpetuate, communicate or formalize knowledge.

See *Shevin v. Byron, Harless et. al.*, 379 So. 2d 633 (Fla. 1980)



So what is a Public Record?

A record is a public record if it is made or received pursuant to a law or ordinance or is made or received in connection with the transaction of official business of the agency.

The supreme court of Florida has further defined public records to those that are used to perpetuate, communicate or formalize knowledge.

Slide 6 – What is a Public Record? II

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What is a Public Record?



- Documents, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, other material.
- Regardless of physical form. (includes electronic records, e-mails, text messages)
- Regardless of location. (personal e-mail used to communicate official business is a public record)



What is a public record?

Public records are documents, letters, maps, books, tapes, photographs, sound recordings, video recordings, data processing software, or other material, virtually anything that can be copied.

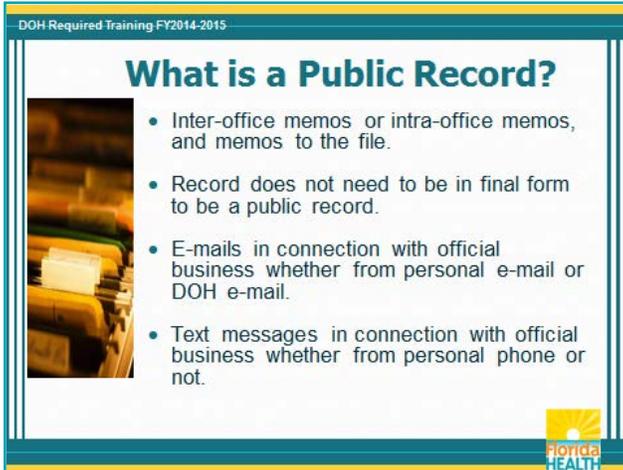
Regardless of physical form or means of transmission, as long as the record is received pursuant to law or ordinance, received in connection with official business or used to perpetuate, communicate or formalize knowledge related to agency business, it is public.

Public records include electronic records, e-mails and text messages.

Regardless of location: The location of the record does not determine whether the record is public or not. The record does not need to be located in an official file or on a DOH server to be a public record.

For example, if you use your personal e-mail to communicate official business, that e-mail is a public record.

Slide 7 – What is a Public Record? III



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What is a Public Record?

- Inter-office memos or intra-office memos, and memos to the file.
- Record does not need to be in final form to be a public record.
- E-mails in connection with official business whether from personal e-mail or DOH e-mail.
- Text messages in connection with official business whether from personal phone or not.

Florida HEALTH

What is a public record?

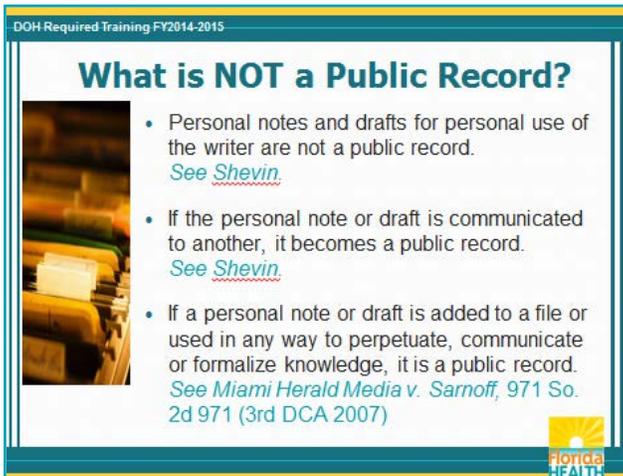
Public records are any memos or documents used to perpetuate, communicate or formalize knowledge such as inter-office memos, intra-office memos and memos to the file.

The records do not need to be in final form in order to be public. If the record is used to perpetuate, communicate or formalize knowledge related to public business, whether in final form or not, it is public.

E-mails in connection with official business of the agency are public records regardless of where they are sent from.

Text messages in connection with official business of the agency are public regardless of whether a personal or State phone was used.

Slide 8 – What is NOT a Public Record?



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What is NOT a Public Record?

- Personal notes and drafts for personal use of the writer are not a public record.
See Shevin.
- If the personal note or draft is communicated to another, it becomes a public record.
See Shevin.
- If a personal note or draft is added to a file or used in any way to perpetuate, communicate or formalize knowledge, it is a public record.
See Miami Herald Media v. Sarnoff, 971 So. 2d 971 (3rd DCA 2007)

Florida HEALTH

What is **not** a public record?

Personal notes or drafts for the personal use of the writer are not a public record. The Supreme Court held that the personal handwritten notes of a consultant hired by an agency who conducted interviews and used those notes to later formalize the information were considered precursors to public records.

However, the Supreme Court also stated that notes or memos communicating information from one public employee to another were public records even if they didn't represent the finalized documents. In other words, you can use personal notes and drafts when creating files or documents relating to official agency business, however, if you communicate those notes to another, they become public records, or if you add that note or draft to a file as the document describing an event or an issue relating to official agency business, that note or draft will likely be considered a public record as it is being used to perpetuate, communicate or formalize knowledge.

In the Miami Herald case, a city commissioner argued that a handwritten memo that he added to "the file" describing a meeting he had was a memo for his personal use at a later time, but the court ruled that it was the only document memorializing the meeting, the memo was a public record. So take care with your personal notes. If there is a question, remember the public records laws are interpreted broadly, and if the personal notes are used to perpetuate, communicate or formalize knowledge related to official agency business, they will be subject to release.

Slide 9 – What is NOT a Public Record? II

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What is NOT a Public Record?



- Personal records not related to official agency business, regardless of location, are not public records.
- Personal e-mails on DOH system are not public records, but could be subject to review to ensure all public records have been disclosed.
- Because public records laws are interpreted broadly, the possibility exists that an e-mail you believe is private could be a public record.



What is **not** a public record?

Your personal notes, records, or e-mails related to your personal life and not related to official agency business are not public records.

Personal e-mails sent from, or received at, the DOH e-mail system are not public records. Take care, however, because those e-mails could be subject to review to ensure that all public records regarding an issue have been disclosed.

Take care with using the DOH e-mail for personal matters. Because public records laws are interpreted broadly, the possibility exists that an e-mail you believe to be private could be subject to a release pursuant to a public records request.

Don't use your DOH e-mail for communicating private things you don't want reviewed or released.

Slide 10 – What is NOT a Public Record? III

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What is NOT a Public Record?



- Don't create records to summarize or explain other records subject to disclosure.
- Do not create records in response to a public records request.
- If you create a record in response to a public records request, it becomes a public record.



What is **not** a public record?

Public records are only records the agency has.

Don't create records in order to summarize or explain public records that are subject to disclosure.

Do not create records in response to a public records request.

If you do create records in response to a public records request, that record is subject to disclosure.

Slide 11 – Practice Tips



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Practice Tips

- Consider each DOH e-mail a public record.
- If an e-mail is regarding an issue under a known exemption, i.e. patient information, encrypt it.
- Don't mix personal and agency records.
- Don't use personal e-mail for state business.
- Don't use your personal phone to text state business.



So here are some practice tips when thinking about public records.

Consider each Department of Health e-mail a public record. If you keep that in mind when e-mailing, you won't risk putting things there that you do not want disclosed.

If your e-mail message is about a known exemption to the public records law, such as confidential patient information, be sure to encrypt it.

Keep your personal life and the agency's business separate. Don't mix personal records and agency records.

Don't use your personal e-mail to conduct state business. If you do, you could subject your personal e-mail to inspection for other public records.

Don't use your personal phone to send text messages regarding state business or you could subject all your text messages to inspection for other public records.

Slide 12 – Practice Tips II



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Practice Tips

- Text messages regarding official agency business are public records. Avoid using text messaging for official business.
- If memorialized in writing, communicated, and not exempted, it is a public record.

DO NOT Destroy Public Records

Refer public records requests to:
The Office of Public Records Requests
in the Office of General Counsel at
850-245-4005



Because text messages regarding official business are public records, try to avoid using texts for official business.

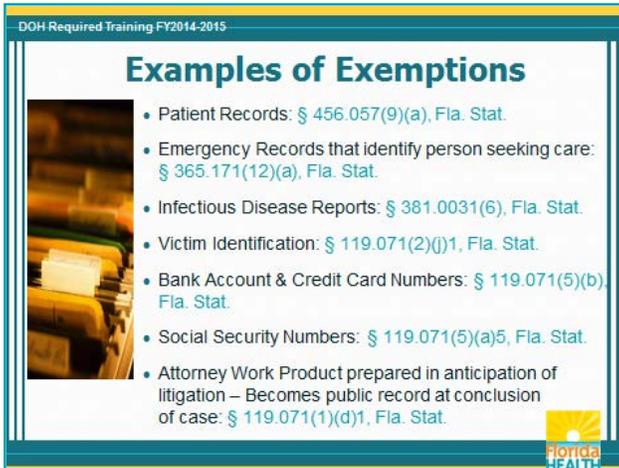
Just keep in mind, if you memorialize something in writing, communicate it to another, and if it involves official state business, and is not under an exemption, it is a public record.

So be careful with notes, and **do not destroy public records.**

Once created, they are subject to the public records laws.

Refer your public records requests to the Office of Public Records Requests, located in the Office of the General Counsel at 850-245-4005.

Slide 13 – Examples of Exemptions



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Examples of Exemptions

- Patient Records: § 456.057(9)(a), Fla. Stat.
- Emergency Records that identify person seeking care: § 365.171(12)(a), Fla. Stat.
- Infectious Disease Reports: § 381.0031(6), Fla. Stat.
- Victim Identification: § 119.071(2)(j)1, Fla. Stat.
- Bank Account & Credit Card Numbers: § 119.071(5)(b), Fla. Stat.
- Social Security Numbers: § 119.071(5)(a)5, Fla. Stat.
- Attorney Work Product prepared in anticipation of litigation – Becomes public record at conclusion of case: § 119.071(1)(d)1, Fla. Stat.



There are records that are exempt from disclosure under the public records laws and other statutory provisions.

In order for an agency to withhold a record from disclosure, it must be under an exemption.

There are several exemptions, and those discussed here are only a few examples.

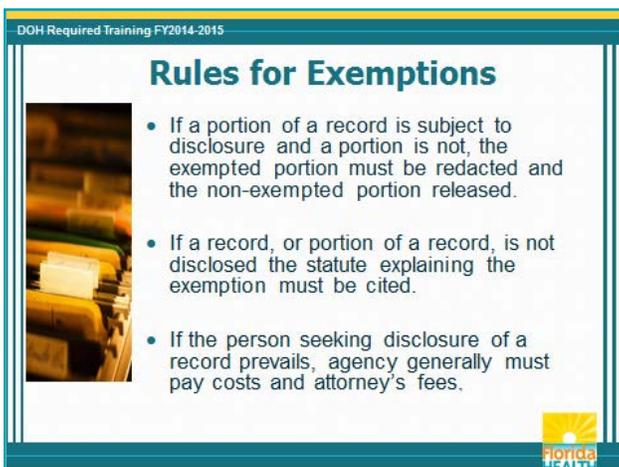
Records related to health care delivery to a person, such as patient records, emergency records that identify the person seeking care, and infectious disease reports, including HIV/AIDS records, are all exempt from disclosure.

Any record that identifies the victim of a crime is exempt from disclosure. This includes records received by the agency from another source that identifies the victim of a crime.

Bank account records, credit card numbers, social security numbers are all exempted.

Attorney work product is exempt from disclosure when prepared in anticipation of litigation. Once the case is over, including any appeal that could occur, these records become public.

Slide 14 – Rules for Exemptions



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Rules for Exemptions

- If a portion of a record is subject to disclosure and a portion is not, the exempted portion must be redacted and the non-exempted portion released.
- If a record, or portion of a record, is not disclosed the statute explaining the exemption must be cited.
- If the person seeking disclosure of a record prevails, agency generally must pay costs and attorney's fees.



If portions of a record are subject to disclosure and other portions are not, the exempted portions must be redacted and the public portions released.

If a record, or portion of a record, is withheld due to an exemption, the agency must identify the statute that exempts the record from disclosure.

If the agency claims that a record is under an exemption and the person seeking disclosure of the record prevails in a court case, the agency will usually be ordered by the court to pay the court costs and attorney's fees for the case.

Slide 15 – Penalties for Public Records Violations

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Penalties for Public Records Violations



- Immediate hearing, agency must comply with a court order to open records within 48 hours.
- Reasonable costs and attorney's fees will be assessed against the agency if the agency unlawfully refuses to provide a public record.
- A public officer who violates public records laws could be subject to a \$500.00 fine. Public officer who knowingly violates public records law is subject to suspension or removal.
- Knowingly violating public records laws is a first degree misdemeanor.



There are penalties for violating public records laws.

A person seeking disclosure of a public record has the right to an immediate hearing. If the court rules in favor of disclosing the record, the agency must obey the court order within 48 hours, unless the court order specifies a different time frame for compliance.

As discussed before, the person seeking disclosure of a public record will often receive court costs and attorney's fees if they prevail.

A public officer who violates public records laws can be subject to a \$500.00 fine. A public officer who knowingly violates public records laws is subject to suspension or removal.

Knowingly violating public records laws is a crime, a first degree misdemeanor punishable by up to one year in prison, a \$1,000.00 fine or both.

Slide 16 – Government in the Sunshine

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Government in the Sunshine



Section 286.011, Florida Statutes

- All meetings of public boards or commissions must be open to the public at all times
- Reasonable notice of such meetings must be given
- Minutes of the meetings must be taken and open for public inspection



Now let's talk about Government in the Sunshine laws.

Section 286.011, of the Florida Statutes requires that all meetings of public boards or commissions be open to the public at all times. Reasonable notice to the public for those meetings must be given.

Minutes must be taken and open for public inspection. Actions by agency boards or commissions are only valid if they are made in a meeting open to the public.

Slide 17 – Government in the Sunshine II

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Government in the Sunshine

Sunshine Law applies to “any board or commission of any state agency.”

- **Including:**
 - **Ad hoc Committees** created by a public entity that acts in an advisory capacity to the public entity. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 2010)
 - **Private Organizations** delegated authority to perform a government function or play an integral part in the decision-making process, which includes recommendations. AGO 07-27
- **Limited Exception:**
 - Committees created merely for the purpose of fact-finding (no decision making). AGO 95-06



The sunshine law applies to any board or commission.

This includes ad hoc committees that act in an advisory capacity and also private organizations with delegated authority to perform a government function, or play an integral part in the decision-making process. These are all subject to the sunshine law.

There is a limited exception when a committee’s only purpose is fact-finding with no decision-making authority.

Slide 18 – What Triggers the Sunshine Law?

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What Triggers the Sunshine Law?

- Two or more members gathered together to discuss issues before the board or committee or issues that could foreseeably come before them.
- Two or more board members cannot discuss board issues outside of the public meeting.
- Telephone calls between members are included.
- Cannot use non-members as liaisons to avoid law.
- Cannot use staff members to circulate information or ideas.
- Applies to all functions of board or commission – formal and informal.



What triggers the sunshine law, when does it apply?

Any time two or more members are gathered together to discuss issues that are before the board, committee or commission or could foreseeably come before the board, committee or commission, that meeting is subject to the sunshine law. In other words, two or more board members cannot discuss board issues outside of the public meeting.

This includes telephone calls between board members. Board business cannot be discussed over the phone.

A board member cannot use a non-member as a liaison to communicate with other board members. A board member can discuss issues with staff without violating the sunshine law; however, a board member cannot use staff to circulate information or ideas from one board member to another.

The sunshine law applies to formal and informal functions of the board or commission. There does not need to be a quorum and the item discussed does not need to be on the agenda for the sunshine law to apply.

Slide 19 – What Triggers the Sunshine Law? II

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What Triggers the Sunshine Law?



- Can attend social events, but may not discuss issues which might foreseeably come before commission or board.
- All discussions of board business must be done in a public meeting.
- May not use written correspondence, e-mail, or texts regarding board business.

Limited Exception: A written report may be circulated prior to meeting, but no comments or discussion may be had until a publicly noticed meeting. AGO 89-23.



Board members are allowed to attend social events or have lunch together, but they may not discuss any issues before the board or that could foreseeably come before the board at any of those social events.

Remember, all discussions related to the board's business must be done in the public meeting. Because the sunshine law requires board members to conduct the business in a public meeting, the board members may not engage in discussions about issues before the board, or foreseeably could be before the board through written discussions, e-mail or texts.

There is a limited exception. A written report may be circulated prior to a meeting, but no comments, discussions or decisions can be made until the publicly noticed meeting. A written report cannot be used as a substitute for action at the public meeting.

Slide 20 – Procedural and Technical Requirements

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Procedural & Technical Requirements



Reasonable Notice to Public:

- Seven days in advance, unless emergency session. Give notice so as to enable public & media attendance.
- Published in FL Administrative Register & on Agency Website.

Meeting Minutes:

- Must be taken & available to public.
- A verbatim transcript is not required. AGO 82-47.



What are some of the procedural and technical requirements of the sunshine law?

The public needs to be given reasonable notice of the meeting, at least seven days in advance of the meeting, unless it is an emergency meeting.

The notice must be given in such a manner that will enable the public and the media to attend. Notice is typically published in the Florida Administrative Register and on the agency's website.

Emergency meetings also need to be noticed on the agency website, or other fair procedure, to provide information about the meeting to the public.

Minutes must be taken and must be available to the public, but the minutes do not need to be a verbatim transcript.

Slide 21 – Procedural and Technical Requirements II

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Procedural & Technical Requirements

Public Participation



- In 2013, Section 286.0114, Florida Statutes, was amended to allow the public a reasonable opportunity to be heard on a proposition before certain boards or commissions.
- Reasonable rules and policies to ensure orderly conduct are appropriate, such as limiting the time for comment.



In 2013, the legislature enacted Section 286.0114 of the Florida Statutes, allowing the public a reasonable opportunity to be heard on a proposition before certain boards or commissions.

Reasonable rules to ensure orderly conduct are appropriate and allowed.

A board can limit the time for public comment, and can prescribe procedures for a group representative, for example, to speak rather than all members of a group.

Slide 22 – Procedural and Technical Requirements III

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Procedural & Technical Requirements



- If meeting adjourned and reconvened – must publish notice of second meeting.
- Should have large enough room to accommodate attendees & be accessible.
- Avoid inaudible discussions.
- Open to public means everyone – including staff, bidders, and media.
- Cannot prohibit use of non-disruptive recording devices.



If a meeting is adjourned and reconvened, a notice must be published for the second meeting. Making an announcement at the first meeting is not sufficient.

The meeting should be in a location that can accommodate the anticipated turnout. Meetings should not be held in locations that limit public access, or locations that have a chilling effect on the public's willingness to participate.

Avoid inaudible discussions at the meeting. In other words, don't hold quiet discussions that can only be heard by the people at the table or the person next to you, while at the meeting.

Open to the public means open to everyone, including staff, bidders, and the media - everyone.

Members of the public can record the meeting, as long as the recording is not disruptive. The board cannot prohibit the use of non-disruptive recording devices.

Slide 23 – Government in the Sunshine III

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Government in the Sunshine



- Courts interpret Sunshine Law liberally and exceptions strictly.
- Actions taken by a board or commission in violation of the Sunshine Law **are void**.



Just like the public records laws, courts interpret the sunshine law liberally and any exceptions to the sunshine law strictly.

Actions taken by a board or commission in violation of the Sunshine law are void.

Slide 24 – Penalties for Sunshine Law Violations

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Penalties for Sunshine Law Violations



- Public officer who violates Florida's Sunshine Law can be subject to a \$500 fine.
- Knowing violation by a member of a board or commission is a second degree misdemeanor.
- Including conduct in violation, that occurs outside the state of Florida.
- A finding of violation can lead to receipt of attorney's fees and court costs.



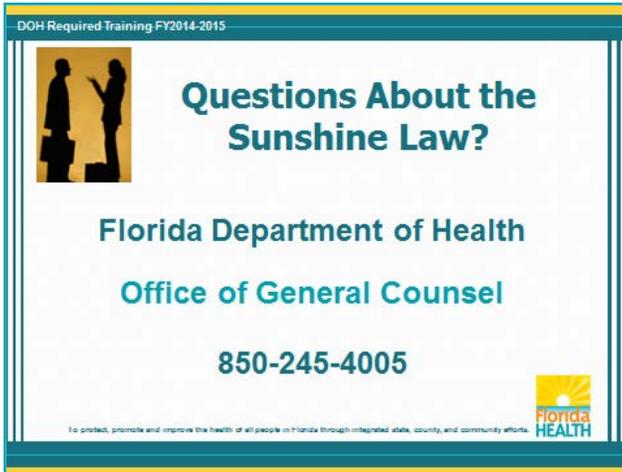
There are penalties for violating the sunshine law.

Violation of the sunshine law can subject a public officer to a \$500.00 fine.

Knowing violation by a member of a board or commission is a second degree misdemeanor, and that includes conduct in violation of the sunshine law, that occurs outside the state of Florida.

If a court finds that violations of the sunshine law occurred, the person or entity seeking enforcement of the sunshine law, will often receive attorney's fees and court costs.

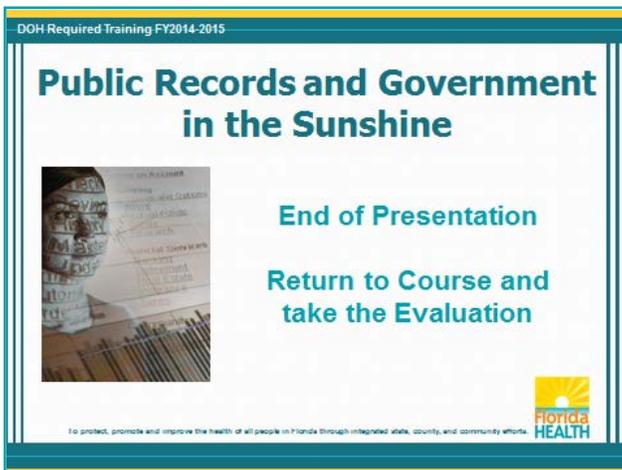
Slide 25 – Questions About the Sunshine Law?



If you have questions about the sunshine law contact the Office of the General Counsel at

850-245-4005

Slide 26 – End Slide – End of Course



This concludes the Public Records and Government in the Sunshine course.

Please return to the course registration management page, mark the course as complete, and take the course evaluation.