# Public Records -- Settlement Demand

**Number:** INFORMAL

**Date:** September 01, 2015

**Subject:**
Public Records -- Settlement Demand

Mr. Raul Gastesi, Jr.
Town Attorney
Gastesi & Associates, P.A.
8105 Northwest 155th Street
Miami Lakes, Florida 33016

Dear Mr. Gastesi:

Thank you for your letter of August 20, 2015, regarding whether the settlement demand that plaintiff Michael A. Pizzi sent to the Town of Miami Lakes is a public record subject to disclosure under Chapter 119, Florida Statutes. As we discussed with Assistant Town Attorney Haydee Sera in our telephone conversation on August 26, 2015, we refer you to the material discussing settlement records in the 2015 Government-in-the-Sunshine Manual, which provides:

"A circuit court held that draft settlement agreements furnished to a state agency by a federal agency were public records despite the department's agreement with the federal agency to keep such documents confidential. *Florida Sugar Cane League, Inc. v. Department of Environmental Regulation,* No. 91-2108 (Fla. 2d Cir. Ct. September 20, 1991), *per curiam affirmed,* 606 So. 2d 1267 (Fla. 1st DCA 1992). *And see Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation,* No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (technical documents or data which were not prepared for the purpose of carrying litigation forward but rather were jointly authored among adversaries to promote settlement are not exempted as attorney work product). *Cf. Prison Health Services, Inc. v. Lakeland Ledger Publishing Company,* 718 So. 2d 204, 205 (Fla. 2d DCA 1998), *review denied,* 727 So. 2d 909 (Fla. 1999) (private company under contract with sheriff to provide medical services for inmates at county jail must release records relating to a settlement agreement with an inmate because all of its records that would normally be subject to the Public Records Act if in the possession of the public agency, are likewise covered by that law, even though in the possession of the private corporation).

In addition, if the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.,* 582 So. 2d 1 (Fla. 4th DCA 1990). *And see Tribune Company v. Hardee Memorial Hospital,* No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the settled case and their litigation strategy would have a detrimental effect upon the agency's position in the related

case)."

We hope that we have been of help. Thank you for contacting the Office of the Attorney General.

Sincerely,

Ellen B. Gwynn
Assistant Attorney General

EBG/tsh