

Public Records requirements; standing requests

Number: INFORMAL

Date: February 26, 2008

Subject:
Public Records requirements; standing requests

The Honorable Richard H. Worch, Jr.
Sheriff of Charlotte County
Office of the Sheriff
25500 Airport Road
Punta Gorda, Florida 33950

Dear Sheriff Worch:

Thank you for contacting this office regarding a public records request. You state that you intend to comply with the requirements in Ch. 119, F.S., but are concerned that certain portions of the request appear to be inconsistent with the requirements in the Public Records Law. The following comments may provide informal guidance in resolving these questions:

1. Question: Is there a 24 hour time limit that applies to all public records requests?

Answer: Chapter 119, F.S., does not contain an express time limit for responding to all public records requests. According to court decisions, the only delay in producing records permitted under Ch. 119, F.S., is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt. Therefore, the amount of time required to respond to a public records request will generally depend upon the volume of materials requested and the number of exemptions. For example, in most instances, an agency should be able to provide a copy of a single personnel file in less than 24 hours. On the other hand, a request for a copy of a 3000 page closed criminal investigation file containing confidential information may take one week or more.

2. Question: Is the custodian required to review public records prior to allowing their inspection under the public records law?

Answer: The custodian is responsible for ensuring the deletion of confidential material prior to release of public records. Therefore, Ch. 119, F.S., does not require that an agency allow public inspection of letters as soon as they are received and before they have been opened. Upon receiving a public records request to review correspondence, for example, the custodian must review the documents, excise all exempt material and then provide the material for inspection.

As to whether an agency should designate someone to act as custodian if the primary custodian is absent for a brief period of time, the answer to this question depends upon the kinds of materials involved. For example, most personnel directors have an assistant available to handle public records requests involving personnel matters in the event that the director is absent. This

makes sense because most of these files are public and the exemptions are relatively clear and easy to apply. The appointment of a designee means that the public does not have to wait until the custodian returns to review what is generally public information.

However, I do not believe that Ch. 119, F. S., requires the head of an agency to appoint someone to open and review all correspondence addressed to the agency head if the agency head is out of the office for a short period of time. A law enforcement agency may receive confidential criminal justice communications that are intended to be opened only by the agency head. Thus, a blanket rule requiring that all correspondence be opened upon receipt in the agency's head's absence may be inconsistent with confidentiality requirements imposed by other laws.

3. Question: May an agency charge for the time involved to review records for exempt material?

Answer: Section 119.07(1)(b), F.S., provides that an agency may charge for the actual labor cost involved in responding to a public records request that involves "extensive" use of personnel. In an advisory opinion, this office concluded that the review of records for exempt material was a part of the duties of the custodian and the agency could not charge for this time unless the public records request required "extensive" labor. AGO 84-81 (imposition of service charge for the inspection of records is not justified merely because the record contains exempt material; rather extensive clerical or supervisory assistance must be involved).

The statute does not define the term "extensive." Accordingly, the appropriate standard would appear to be one of reasonableness. In responding to public records requests received in this office, we have found a 4 hour period to be the most practical definition of "extensive." In this way, we avoid having to expend additional time handling the paperwork and billing involved in calculating charges unless the work takes a considerable amount of time. However, other agencies may be of the view that a different definition of "extensive" more accurately reflects their particular situation. In a recent decision, the court upheld a rule of the Department of Corrections providing that a public records request involved "extensive" labor if the amount of time required to find the record, review it for exemptions, copy it, and refile it took more than 15 minutes. *Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA), review denied, 592 So. 2d 680 (Fla. 1991).

Regarding payment of charges, it would appear that an agency is not required to "bill" for public records charges and may require that payment be made before handing over the copies.

4. and 5. Question: Is an agency required to put copies of incident reports on a table for media review or may the agency require the media to make public records requests for the reports on a daily basis? Must an agency respond to a "standing" public records request?

Answer: This office has stated that upon receipt of a public records request, the agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Ch. 119, F.S. However, the request applies only to those documents in the custody of the agency at the time of the request; nothing in Ch. 119, F.S., appears to mandate that an agency respond to a so-called "standing" request for production of all public records that it may receive at any point in the future.

Thus, many agencies have followed the practice initiated by your agency in providing voluntary no-cost access to certain information that helps the public to become aware of issues that concern them. The voluntary distribution of crime reports, at no-cost, as is the practice in your agency, has no doubt assisted the media in informing the public about crime and related issues.

Thank you for contacting this office. I trust that these informal comments will be helpful in resolving these issues. If further information is needed, please do not hesitate to contact me.

Sincerely,

Pat Gleason
General Counsel

PRG/dlh