



FLORIDA'S SUNSHINE MANUAL
SUBPART 2-I: MAINTENANCE, STORAGE, AND RETENTION
REQUIREMENTS

Official Handbook on Public Records Laws

{Publish Date: 3/9/2023}

Subpart 2-I
Maintenance, Storage, and Retention Requirements

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FLORIDA SUNSHINE MANUAL

PART 2

PUBLIC RECORDS



FLORIDA'S SUNSHINE MANUAL

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DATE: March 9, 2023

PART: 2 PUBLIC RECORDS

SUBPART: I MAINTENANCE, STORAGE, AND RETENTION
REQUIREMENTS

SECTIONS: 2-I-1 through 2-I-4

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2-I-1 | MAINTENANCE AND STORAGE OF RECORDS

All public records should be kept in the buildings in which they are ordinarily used. Section 119.021(1) (a), F.S. Moreover, insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. Section 119.021(1) (b), F.S. Records that are in need of repair, restoration, or rebinding may be authorized by the head of the governmental entity to be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them. Section 119.021(1) (c), F.S.

Thus, public records may not routinely be removed from the building or office in which such records are ordinarily kept except for official purposes. AGO 93-16. The retention of such records in the home of a public official would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records. *Id.* And see AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices); and AGO 07-14 ("Although the Public Records Law does not prescribe a location at which public records must be maintained, it does suggest that such records be kept where they are ordinarily used"). Cf. *Inf. Op. to Sola*, March 9, 2010 (municipal election records are municipal records which should be maintained by city even though election conducted by county supervisor of elections) and AGO 88-26 (while Ch. 119, F.S., does not require a county to transport microfilmed copies of public records maintained in a storage facility outside the county to the county courthouse when the originals are available at the courthouse, the microfilmed copies must be available for copying at their location outside the county).

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2-I-2 | DELIVERY OF RECORDS TO SUCCESSOR

Section 119.021(4)(a), F.S., provides that whoever has custody of public records shall deliver such records to his or her successor at the expiration of his or her term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. See *Maxwell v. Pine Gas Corporation*, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer); AGO 98-59 (records in the files of the former city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor); and AGO 75-282 (public records regardless of usefulness or relevancy must be turned over to the custodian's successor in office or to the Department of State). And see s. 119.021(4)(b), F.S., providing that "[w]hoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her."

In the absence of contrary direction in the legislation dissolving a special taxing district, the district's records should be delivered to the Department of State. AGO 95-03. Compare AGO 09-39, stating that in light of a court order holding that an independent special district is the successor-in-interest to the powers and duties of a municipal services benefit unit [MSBU], the records of the MSBU should be delivered to the special district. Cf. s. 257.36(2)(b), F.S., specifying procedures for disposition of agency records stored in the state records center in the event that the agency is dissolved or its functions are transferred to another agency.

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2-I-3 | TRANSITION RECORDS OF CERTAIN OFFICERS-ELECT

Section 119.035(4), F.S., states that "upon taking the oath of office, the officer-elect shall, as soon as practicable deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office." The term "officer-elect" for purposes of this section means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 119.035(5), F.S.

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2-I-4 | RETENTION AND DISPOSAL OF RECORDS**a. Retention Schedules**

Section 119.021(2)(a), F.S. requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules. Section 119.021(2)(b), F.S. See generally Chs. 1B-24 and 1B-26, Florida Administrative Code. The approved records retention schedule for state and local governmental entities is located online at dls.dos.state.fl.us/barm/genschedules/GS1-SL.pdf. Cf. L.R. v. Department of State, Division of Archives, History and Records Management, 488 So. 2d 122 (Fla. 3d DCA 1986) (an affected party seeking to challenge an agency's approved records retention schedule may be entitled to a hearing pursuant to Ch. 120, F.S.).

Retention schedules for judicial branch records are established by court rule. See Fla. R. Gen. Prac. & Jud. Admin. 2.430 (court records) and Fla. R. Gen. Prac. & Jud. Admin. 2.440 (judicial branch administrative records). Similarly, procedures for maintenance and destruction of legislative records are established in legislative rules. Legislative rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

b. Disposal of Records

Section 257.36(6), F.S., states that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division." Section 119.021(2)(c), F.S., provides that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, F.S. Compare s. 119.021(3), F.S., stating that notwithstanding the provisions of Chs. 119 or 257, F.S., certain orders that comprise final agency action must be permanently maintained.

Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the statutory



restrictions on disposal of records. AGO 94-75. See also AGOs 09-19 (city must follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 96-34 (e-mail messages are subject to statutory limitations on destruction of public records); and 75-45 (tape recordings of proceedings before a public body must be preserved in compliance with statutory record retention and disposal restrictions). And see *Raydient LLC v. Nassau County, Florida*, No. 2019-CA-000054 (Fla. 4th Cir. Ct. August 24, 2021), available in the Cases database at the open government site at myfloridalegal.com, finding that the "routine and indiscriminate destruction of text messages by [county commission] members and certain county employees, regardless of the content of each message, violated s. 119.021, F.S.," requiring that public records be kept in accordance with a retention schedule adopted by the Florida Department of State.

Similarly, registration and disciplinary records stored in a national association securities dealers database and used by state banking department for regulatory purposes are public records and may not be destroyed merely because an arbitration panel of the national association has ordered that they be expunged; such records are subject to statutory mandates governing destruction of records. AGO 98-54. *Accord Inf. Op. to Hernandez*, July 1, 2003 (agency not authorized to purge or expunge documents it created while carrying out what it perceived to be its official duty based upon an accusation that the agency may have been mistaken in such an assessment). Cf. AGO 91-23 (clerk of court not authorized to expunge a court order from the Official Records, in the absence of a court order directing such action).

c. Exempt Records

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, the Attorney General's Office concluded that the City of Hollywood could not destroy or dispose of licensure, certification, or employment examination question and answer sheets except as authorized by statute. And see AGO 87-48 (statutory prohibition against placing anonymous materials in the personnel file of a school district employee did not permit the destruction of such materials received in the course of official school business,



absent compliance with statutory restrictions on destruction of records). An exemption only removes the records from public access requirements, it does not exempt the records from the other provisions of Ch. 119, F.S., such as those requiring that public records be kept in a safe place or those regulating the destruction of public records. AGO 93-86. See s. 119.021, F.S.

Moreover, if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying, the requested record may not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was made to the custodian; if a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties. Section 119.07(1)(h), F.S.

d. Evidence Obtained by Law Enforcement Agencies

Documentary evidence obtained by a police department is a public record subject to retention schedules approved by the division. AGO 04-51. Accord Inf. Op. to Blair, August 24, 2011 (evidence that constitutes a public record may be destroyed only in accordance with retention schedules established by the division and noting that the division has adopted a General Records Schedule GS2 for law enforcement agencies).

However, "the disposition of evidence not constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency's determination that it is no longer needed." Inf. Op. to Blair, August 24, 2011. (e.s.) Cf. Church of Scientology Flag Service Org., Inc. v. Wood, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying").



e. Duplicate Records

Section 257.36(6), F.S., requires the division to adopt rules which, among other things, establish "[s]tandards for the reproduction of records for security or with a view to the disposal of the original record." See AGO 18-04 (according to a division rule, "an agency that designates an electronic or microfilmed copy as the record (master) copy may then designate the paper original as a duplicate and dispose of it in accordance with the retention requirement for duplicates in the applicable retention schedule unless another law, rule, or ordinance specifically requires its retention").

Accordingly, the division is responsible for determining whether an agency may dispose of an audiotape of a witness statement without regard to the retention schedule, if there is also a transcript of the statement. Inf. Op. to Mathews, July 12, 2004. Cf. AGO 91-09 (if a facsimile document is subsequently copied by the receiving agency, the facsimile document is considered an intermediate document which may be destroyed; the copy of the facsimile then is retained as a public record). See also AGO 92-85, stating that individual school board members are not required to retain copies of public records which are regularly maintained in the course of business by the clerk of the school board in the school board administrative offices.

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APPENDIX



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