#### DEPARTMENT OF MANAGEMENT SERVICES

#### PUBLIC RECORDS REQUEST MANUAL

#### March 2009

#### TABLE OF CONTENTS

#### TOPIC PAGE

#### PREFACE 3

#### CURRENT PUBLIC RECORDS LAW 3

#### APPLICATION 3

#### DOCUMENTS EXEMPT FROM PUBLIC DISCLOSURE 3-5

#### GUIDELINES FOR REDACTING 5

#### TRADE SECRET INFORMATION 8

#### FREQUESTLY ASKED QUESTIONS 8

#### CONCLUSION 13

#### PREFACE

Florida is renowned for putting a high priority on the public's right of access to governmental meetings and records. In fact, the principles of open government are embodied not only in Florida statutes, but also guaranteed in the state Constitution.

Florida began its tradition of openness back in 1909 with the passage of what has come to be known as the "Public Records Law," which is embodied in Chapter 119 of the Florida Statutes. This law provides that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Legislature. Over the years, the definition of what constitutes "public records" has come to include not just traditional written documents such as papers, maps and books, but also tapes, photographs, film, sound recordings and records stored in computers.

#### CURRRENT PUBLIC RECORDS LAW

**Chapter 119, F.S.**

Every person who has custody of a public record must allow the record to be inspected and examined by any person requesting to, under reasonable conditions. The custodian must furnish a copy of the record upon payment of the cost of duplication or of the fee prescribed by law.

Florida's public records law, listed in Chapter 119 of the Florida Statutes, defines public records as:

"All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of physical form, or 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."

The Florida Supreme Court interprets this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. All of these materials, regardless of form, are open for public inspection unless the legislature has specifically exempted them from disclosure. One Florida court has held that "information stored in a computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet."

#### APPLICATION

**What materials are public records?** "Public records" include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or in connection with the transaction of business by any agency. The only exceptions are for records specifically made confidential by the Florida Constitution and records exempted by state statute.

#### What agencies are subject to the Public Records Law? "Agency" includes any state or local officer, department, division, board, bureau, commission, or other unit of government created or established by law and any other public or private agency, person, or business acting on behalf of a public agency. Records of advisory boards created by governmental entities to provide advice or make recommendations are subject to the Public Records Law. Florida's Public Records Law:

#### How the Law Affects Your E-mail as a DMS Employee:

E-mail created or received by DMS employees in connection with official business, which perpetuates, communicates or formalizes knowledge, is subject to the public records law and open for inspection.

If your e-mail falls within the definition of a public record, you may not delete it except as provided in the record retention schedule. Unless it falls within one of the specific exemptions described in the public records statute, you must produce that e-mail message to any person upon request. A person need not have a "legitimate" need for public records to be entitled to inspect them.

#### Responding to a Public Records Request:

Public records requests may be made in writing or orally. All public records requests should be referred to the appropriate delegate or administrative supervisor. The delegate or administrative supervisor is responsible for appointing one or more persons to gather the requested documents and then either arranging a time for inspection of the documents or making copies available to the requestor. E-mail that does not fall within the definition of a public record should not be produced. E-mail which is a public record but contains exempt information should be produced but the exempt information must first be deleted or redacted. If in doubt as to whether an e-mail message is a public record or contains exempt information, the delegate or administrative supervisor should consult the guidelines and/or consult with the General Counsel's Office as necessary.

If the person making the records request wishes to obtain copies of the documents, the public records law allows DMS to charge 15 cents per one-sided copy. In addition, if copying the public records requires extensive use of information technology resources or clerical and/or supervisory assistance, DMS may assess a reasonable service charge based on DMS' actual incurred costs. An estimate of the charges should be given to the requestor and money received prior to responding to an extensive request. All charges should be collected before producing the documents.

The Policies of DMS, specify the correct processing of public records request. They can be found using the following links:

Human Resources:

<http://dms.myflorida.com/agency_administration/administrative_policies_and_procedures_code_of_personal_responsibility/human_resouces_hr>

Administration:

<http://dms.myflorida.com/agency_administration/administrative_policies_and_procedures_code_of_personal_responsibility/administration>

In addition to these policies, a list of the more frequently encountered laws and rules is set forth below:

**MORE FREQUENTLY ENCOUNTERED RULES AND LAWS CONFIDENTIAL/OR EXEMPT MATERIAL FROM PUBLIC DISCLOSURE**

This list is not meant to be all inclusive but should cover most of the public records which need redacting. According to Florida Public Records Law certain information is exempt and needs to be redacted before the information is released and made public. The major categories of this information are as follows:

|  |  |
| --- | --- |
| Item | **General Exempt/Confidential Data** |
| 1. | All Social Security Numbers  |
| 2. | Examination answers and question sheets for the purpose of licensure (F.S. § 119.071) |
| 3. | Certain financial records, including any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. [119.07](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0119/Sec07.HTM)(1) and s. 24(a), Art. I of the State Constitution. (F.S. § 119.071(1)(c)) |
| 4. | Medical and insurance records (HIPPA) |
| 5. | Certain employees’ home addresses, telephone numbers, and photos (F.S. § 119.071) |
| 6. | Procurement documents and bids before the vendor is chosen and the decision is posted.  This includes sealed bids, proposals, rejected bids or proposals, meetings of negotiations, and all responses. (F.S. §119.071) |
|  |  |
| 7. | Risk management claims file or meeting minutes relating to claims (F.S. § 768.28) |
| 8. | Discussion and all work products of collective bargaining (F.S. § 447.307(2)) |
| 9. | Personally Identifying Information concerning participants in the Public Employee Retirement Program ( F.S. § 121.4501 (19)) |
| 10. | Driver’s License Photos are to be redacted unless there's a government purpose as specified under F.S. § 322.142 (4). |
| 11. | Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. (F.S. § 119.071(5)(b) |
| 12. | A security system plan or portion thereof as well as building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  |
| .  |  |
| 13. | If a document is marked Trade Secret or Proprietary, this needs to be addressed by the Office of the General Counsel. In accordance with Florida Statute 815.045 the legislature found that trade secret information as defined in s. 815.04(3) is expressly confidential and exempt because it can be a felony to disclose such records. When an issue is presented with regard to trade secret information, or any document requested is marked trade secret or confidential by a vendor, contact the Office of the General Counsel. |

*Please be aware there are more than 100 items that are classified as exempt or confidential. If you are unsure that a record contains confidential, exempt, or sensitive information, contact the Office of the General Counsel or your Public Records Contact.*

#### Maintaining E-Mail Documents:

Florida's public records law offers challenges to maintaining e-mail, mainly because e-mail documents are both informal and efficient. Most e-mail users prefer to reduce or eliminate the handling, filing and archiving tasks often associated with hard copy. Because of the differences in which e-mail and hard copy are used, many e-mail users do not have systems in place for periodically reviewing, storing or deleting e-mail.

Public record e-mail can be deleted after it has been retained for the correct time period as determined by the Department of State retention schedules. A public record that is stored and accessible after this time is still a public record and must be produced upon request. A systematic deletion program not only eliminates obsolete documents from the file, but also saves resources by not indefinitely and unnecessarily storing information beyond appropriate time lines.

The technical details and methods of storing, retrieving and printing your e-mail depend on the e-mail system used.

**DOCUMENTS CONFIDENTIAL AND/OR EXEMPT FROM PUBLIC DISCLOSURE**

The law makes a certain records "confidential" and "exempt" from public disclosure. Although some of these protected categories can be found in Chapter 119, over 300 other specific statutory protections exist outside of the specific public records statutes. Therefore one cannot simply rely upon a preview of Chapter 119 for the confidential and exempt protections.

Confidential and/or exempt refers to records that are not subject to public inspection and may be released only to those authorized by statute, court order, or specific authorization. **In certain circumstances, the releasing of protected documents is a felony under the Florida Criminal Code.**

For example, the Exempt records relating to retirement records are located within the retirement statutes rather than in 119. Nevertheless, there are certain types of information and/or documents which can be identified as protected.

 **GUIDELINES FOR REDACTING**

“Redact” means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

According to Florida Public Records Law certain information is exempt and needs to be redacted before the information is released and made public. The major categories of this information are as follows:

(1) **The social security numbers** of all current and former agency employees which numbers are contained in agency employment records are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Effective October 1, 2002, all social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to all social security numbers held by an agency before, on, or after the effective date of this exemption.

(2) **Medical information** pertaining to a prospective, current, or former officer or employee of an agency

(3) **A security system plan** or portion thereof as well as **building plans, blueprints, schematic drawings**, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) The **home addresses, telephone numbers, social security numbers, and photographs** of active or former law enforcement personnel, code enforcement, judges, including correctional and correctional probation officers, personnel of the Department of Children and Family Services, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; **the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel**; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(5) **Bank account numbers and debit, charge, and credit card numbers** held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

This list is not meant to be all inclusive but should cover most of the public records which need redacting. If a document is marked **Trade Secret or Proprietary**, this needs to be addressed by the Office of the General Counsel.

**TRADE SECRET INFORMATION**

In accordance with Florida Statute 815.045 the legislature found that trade secret information as defined in s. 815.04(3) is expressly confidential and exempt because **it is a felony to disclose such records.**

When an issue is presented with regard to trade secret information, or any document requested is marked trade secret or confidential by a vendor, contact the Office of the General Counsel.

#### FREQUENTLY ASKED QUESTIONS

**May an agency impose a waiting period or establish a specific time period for access to public records?**

No. The only delay permitted in producing records is the reasonable amount of time it takes to retrieve the record and delete any exempt portions.

**Q: May an agency require that a request for records be made in writing or that the requester furnish background information?**

No. A custodian must honor a request for copies of records whether the request is in writing, over the telephone, or in person, as long as the required fees are paid. A requester cannot be required to disclose his/her name, address, or telephone number unless this information is required by law. If a public agency believes it is necessary to document a request for public records, the agency may require the custodian to complete the appropriate document.

**Q: Must a person give a reason for his/her request?**

No. The Public Records Law does not require a person to show a purpose or "special interest" as a condition of access to public records.

**Q: May an agency refuse to allow inspection or copying of public records on the grounds that the request is "overbroad"?**

No. A custodian is not authorized to deny a request for access to public records because it is not specific enough. If a request is insufficient to identify the records, the agency has the duty to notify the requester promptly that more information is needed. Unless there is a statutory exemption, a custodian must produce the records requested regardless of the number of documents involved or any inconvenience. The agency is authorized, however, to charge a reasonable fee, in addition to the actual cost of duplication, for the cost of extensive use of technology resources or personnel if required by the nature or volume of the request.

**Q: May an agency refuse a request because portions of the record requested contains exempt information?**

No. If a record contains information which is exempt from public disclosure, the custodian must delete that which is exempt and provide a copy of the remainder. Also, if so requested, a custodian must state in writing the statutory citation authorizing the deletion.

**Q: Is an agency required to answer questions or create a summary regarding contents of public records?**

No. The Public Records Law does not require an employee to answer questions regarding details of the contents of records or to excerpt or interpret them for the public. However, an agency must respond to all requests for any information about copying costs.

**Q: Is an agency required to produce records in a particular form?**

An agency is not ordinarily required to produce records in a particular form. For example, if DMS keeps a chronological list of vendors, a requester cannot require the department to reorganize the information by geographic area. However, DMS is required to provide a copy of a public record in any medium maintained by the agency.

**Q: Is an agency required to comply with a request for records stored in a computer?**

Yes. Information stored in a computer is as much a public record as written pages in a book or file folders, and are governed by the same rules as other public records. An agency that maintains a public record in an electronic recordkeeping system must provide a copy of a requested record in the medium requested if the agency maintains the record in that medium.

**Q: May DMS refuse a request to inspect or copy the agency's records on the grounds that they are not in its possession?**

No. An agency is not authorized to refuse to allow inspection of its public records on the grounds that the documents are in the actual possession of someone else. Public records may not be removed from the place where they are ordinarily expected to be kept, except for reasonable business purposes. If the records are with the General Counsel's office, obviously consult with the Office of the General Counsel.

**Q: May an agency charge a fee for the mere inspection of public records?**

Not unless the compilation of same is time consuming. Public records must be open for public inspection without charge unless otherwise expressly provided by law. But if the volume of records to be inspected is large, requiring the extensive use of agency resources, a special service charge could be applied. It is irrelevant whether the requested public record is a written document, a videotape, or information stored in a computer. Providing access is a statutory duty of all records custodians. It is not a revenue-generating operation.

**Q: What fees may be charged for copies of public records?**

Agencies are permitted to provide copies of public records without charge. An agency may, however, charge for copies, as long as the fee does not exceed that established by law. If no other fee is set in the statutes, the custodian may charge up to 15 cents per one sided page for paper copies that are 8 1/2 by 14 inches, or smaller, and no more than 20 cents for two sided duplicated copies. Up to $1.00 per page may be charged for certified copies. For other copies, the charge is limited to the actual cost of duplication. The phrase "actual cost of duplication" is defined to mean "the cost of the materials and supplies used to duplicate the record, but it does not include the labor and overhead cost . . . ." No fees designed to recoup the original cost of developing or producing the records may be charged. An agency may also charge a reasonable fee, based on actual costs incurred, for the extensive use of agency resources.

Q.: **How long must an agency retain a public record?**

Whoever has custody of public records must give them to his/her successor at the expiration of his/her term 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. Florida law requires agencies to give the Division a list or schedule of records that are no longer needed in the transaction of business and that do not have enough administrative, legal, fiscal, or historic significance to justify keeping them. The Division has rules, binding all agencies, concerning the disposal of public records.

The Florida Department of State publishes a records retention schedule which is accessible at: <http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm>

**Q: What do I do when a reporter calls asking for my e-mail?**

Notify your Bureau Chief or administrative supervisor who will coordinate with the Office of Communications the gathering of the public record e-mail documents that need to be given to the reporter.

**Q: Does a requestor need to show a "legitimate interest" in my public records e-mail before being allowed to see it?**

No. Any person has the right to request to see a public record for any reason.

**Q: Does a requestor have the right to conduct a "fishing expedition" and make "overbroad" requests?**

Yes. The law does not require the requestor to specify a particular document. You may want to seek clarification and guidance when responding to any "overbroad" requests to seek advice on how to have the request narrowed. Then the request is sent for an estimate of cost.

**Q: May I refuse to respond to a public records request because I just don't have the time to gather the documents?**

No. However, if responding to a public records request requires a substantial amount of time, the law allows you to charge the requestor for the cost of that time.

**Q: How do I determine what information is exempt from the public records law?**

Please see in general the guidelines included in this manual. If there is any question, or simply for clarification ask your Bureau Chief or administrative supervisor. If additional advice is needed, you may contact the General Counsel's Office.

**Q: Am I required to produce personal, non-business-related e-mail upon request?**

You may be required to, or it may be included in other responses. Only e-mail made or received pursuant to law or in connection with the transaction of official state business must be produced, however this can sometimes prove problematic in excluding personal e-mail randomly mixed into production. Appropriate use of state equipment for personal reasons is addressed in DMS policies.

**Q: How quickly must I respond to a public records request?**

The law requires you to respond within a reasonable time, which will depend on the nature of the request. However, the courts have made it clear that public records are to be given attention.

**Q: May I require requestors to put public records requests in writing?**

No. Oral public records requests are as valid as written requests. However, you may ask for the request to be placed in writing so there are no misunderstandings about what is sought. If the requestor refuses, offer to write the request down and read it back to them so that a written record is maintained.

**Q: Must I produce my public record e-mail in a particular format?**

No. You are only required to produce existing records. The law does not require you to create new records.

**Q: Does the public records law require me to answer questions regarding the content of public record?**

No. You are only required to produce the documents. You do not have to answer any questions, although at times it may helpful to do so.

**Q: If the person who sent me a public record e-mail asked me to keep it confidential, can I refuse to produce it?**

No. If a document is a non-exempt public record, it must be produced upon request, even if the sender has asked that it be kept confidential.

**Q: What happens if I refuse to turn over a public record upon request?**

A person who knowingly violates the public records law is subject to disciplinary action and may be found guilty of a criminal law violation.

**Q: If I keep public records at my house instead of my office, must I still produce them upon request?**

Yes. All non-exempt public records must be produced regardless of where they are physically located.

**Q: What if the requested document contains exempt and public material? Can I withhold the entire document?**

Not usually. When possible, the law requires us to delete the portion of the document that is exempt and provide the document to the requestor. If this is not possible, the requestor may need to pay for a copy of the records which can be redacted for production.

**CONCLUSION**

Each state agency has a duty to provide access to public records.  In fulfilling this duty, DMS places a high priority on the public's right of access to governmental records while still maintaining the confidential or exempt nature of the records it maintains.  To that end, this public records manual is meant as a guide for DMS employees to use when handling requests from the public.  However, this manual is not all-inclusive and does not address all situations or types of public records requests.  If a DMS employee has any questions about public records or the public records request process that are not addressed in this manual, that employee should contact either their division’s public records contact (located on the DMS Workplace) or the General Counsel’s Office.