

Florida Public Records Law Collier County Schools September 18, 2024

**RICK COURTEMANCHE
DEPUTY GENERAL COUNSEL
THE FLORIDA BAR**



RICHARD D. COURTEMANCHE, JR. ("RICK")

Office of General Counsel

The Florida Bar

651 East Jefferson Street

Tallahassee, Florida 32399-2300

850-561-5788

rcourtemanche@floridabar.org

Mr. Courtemanche has been a practicing attorney in the State of Florida for over 35 years and has over 25 years of experience in public records on the state and local level. Currently he is Deputy General Counsel for The Florida Bar coordinating all public records responsibilities, including the drafting of policy, overseeing and coordinating the public records responses for all divisions, as well as records retention. He is also responsible for monitoring litigation involving The Florida Bar, advising the Client Security Fund program, Board of Governors issues, personnel issues, and advertising grievance prosecution.

Mr. Courtemanche spent 15 years as Police Legal Advisor to the Tallahassee Police Department, providing advice and counsel to the Department on personnel, criminal, policy, public records, and administrative issues, and represented the Department in forfeiture litigation and other litigation matters.

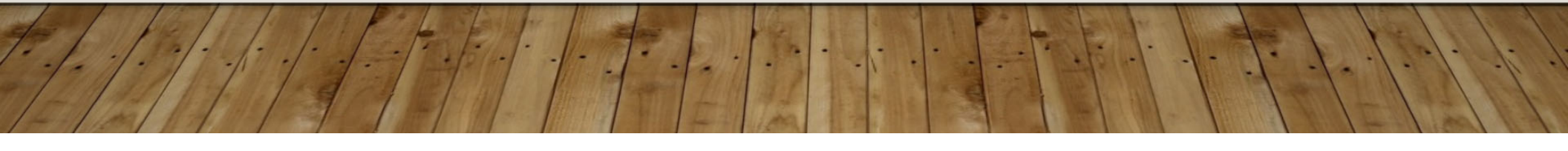
In addition, he spent 6 years as an Assistant General Counsel with the Florida Department of Law Enforcement, prosecuting disciplinary cases on law enforcement and correctional officers for the Florida Criminal Justice Standards and Training Commission. Mr. Courtemanche also handled public records issues involving post-conviction death penalty appeals for FDLE.

Mr. Courtemanche graduated from Florida State University (B.S. 1985) and the University of Alabama School of Law (J.D. 1988). He has been a member of the National Association of Bar Executives, the American Bar Association, Florida Association of Police Attorneys, and the International Association of Chiefs of Police. He is married and has four sons.

Why Do People Make Public Records Requests?

1. The Requestor legitimately needs the records
2. Conducting “audit” either personally or on behalf of some open government association/group
3. Initiate public records litigation
4. Embarrass the Agency

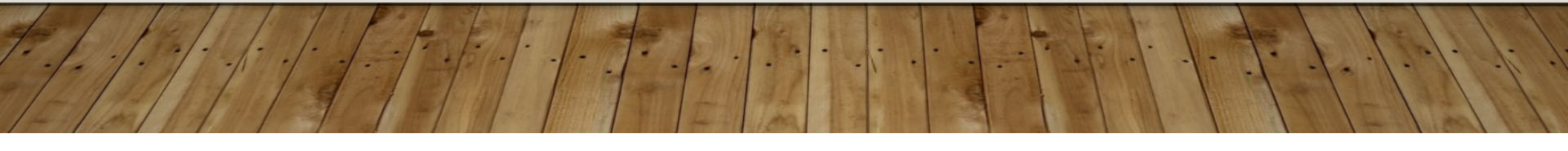
WHO CARES! YOU SHOULDN'T!



FLORIDA'S FIRST PUBLIC RECORDS LAW:

“That all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.”

Chapter 5942, Acts 1909, Sec. 1



Art. I, Sec. 24(a), Fla. Const. (1992)

- **“Every person has the right to inspect or copy any public record...This section specifically includes the legislative, executive, and judicial branches of government; ... counties, municipalities, and districts; and each constitutional officer, board, and commission”**
- **However, each branch has different laws or rules that regulate access to its records.**

Executive Branch – Chapter 119, F.S.

§119.011(2), F.S. - “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law...

- **Intended to apply only to executive branch agencies and their officers and to local governmental entities and their officers, which do not include the legislature itself, the judiciary, or independent constitutional entities.**

Legislative Branch

§ 11.0431, F.S. –

(1) [E]very person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state...

(5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to s. 24, Art. I of the State Constitution.

2022-2024

House Rule 14.1—Legislative Records

There shall be available for public inspection, whether maintained in Tallahassee or in a district office, the papers and records developed and received in connection with official legislative business, except as provided in s. 11.0431, Florida Statutes, or other provision of law...

Senate Rule 1.48—Legislative records; maintenance, control, destruction, disposal, fee for copies, and disposition

(1) Public records, not exempted from public disclosure, may be inspected by any person desiring to do so at reasonable times, under reasonable conditions, and under supervision of the person who has custody of the records, or that person's designee.

Judicial Branch - Rule 2.420, Fla.R.Gen.Prac. & Jud.Admin

(a) ... The public shall have access to all records of the judicial branch of government, except as provided below....

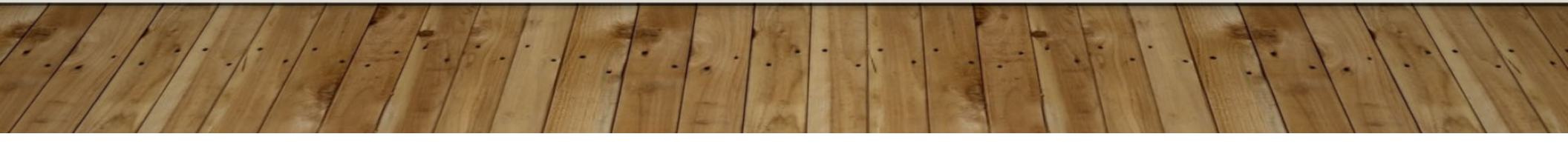
(b)(2) --“Judicial branch” means the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or chief justice.

CLERK OF COURTS

- Pursuant to s. 125.17, F.S., the clerk of the circuit court serves as the *ex officio* clerk to the board of county commissioners.
- Records maintained by the clerk which relate to this function (e.g., county resolutions, budgets, minutes, etc.) are public records which are subject to Ch. 119, F.S.
- When the clerk is acting in his or her capacity as part of the judicial branch of government, access to the judicial records under the clerk's control is governed exclusively by rule 2.420

What is the definition of a “public record”?

“all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, 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.”



What is the definition of a “public record”?

“...any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

Shevin v. Byron, Harless, Schaffer, Reid, and Associates (379 So. 2d 633, Fla. 1980)



What is the definition of a “public record”?

- Whether it is in final form or is designated by the agency as a “draft,” “working copy,” or “preliminary version.”
- Any record that is circulated for review or shared for comment or information is a public record.
- Notes prepared for personal use, not shared, may not be public record if not intended to be final evidence of knowledge.
- Inter-office memos are public records as they are the final evidence of knowledge.

What is the definition of a “public record”?

- Records not made in connection of official business are not public record. Determining factor is not where records housed but the nature of the record
 - **State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003)**
- Example: A public employee who sends a proposed budget to a supervisor for review is a public record regardless of whether sent from the employee's government computer or from his or her home computer using a personal e-mail account.

ELECTRONIC RECORDS

- Electronic Records are as much a public record as a paper document
 - Examples - Email messages, Social media posts, Text messages
- Section 119.01(2)(b), F.S. - Agency must consider, when designing or acquiring an electronic recordkeeping system, Whether the system is capable of providing data in a format consistent with public access.

ELECTRONIC RECORDS

- An agency must provide a copy of a public record in the format requested if the record is maintained in that format. If the record is not maintained in the format requested, an agency has the option of converting the record and charging a fee
- An agency is not required to provide public records in an electronic format other than the standard format routinely maintained by the agency.

REQUESTS FOR INFORMATION

- Florida's public records law requires an agency to provide access to public records.
 - not required to provide information from those records.
 - does not mandate that an agency create new records in order to accommodate a request for information from the agency.

Who Can Request Public Records?

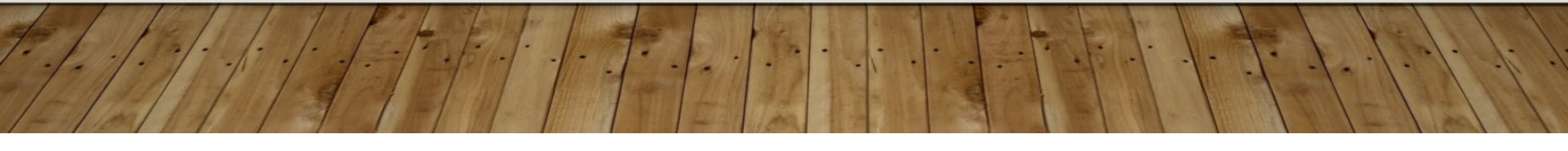
Art. I, Section 24, Florida Constitution – “Every person has the right to inspect or copy any public record...”

**SO THE
ANSWER IS
ANYONE!**



I HATE PUBLIC RECORDS REQUESTERS!

- A requester's motive for wanting the records is irrelevant.
- Annoying requesters who make public record requests for the sole purpose of harassment is irrelevant.
- Requesters who intend on using the records for commercial purposes are irrelevant.
- The number of records involved or the possible inconvenience to the agency is irrelevant.



PROCEDURAL REQUIREMENTS

- Absent specific statutory authority, an agency cannot require that:
 - Requests for records be made in writing.
 - A requestor disclose his/her name, address, or telephone number.
 - The reason for the request.

RESPONSE TIME

- How soon do I have to respond to a request?
 - The law and the court require that a response be in a reasonable amount of time.
 - The courts have made it clear that public records are to be given attention.
- *“The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt”*

Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)

RICK'S RULES



- Read the request: what are they asking for?
 - If you can't understand ask for clarification. Sometimes a phone call makes sense.
 - Many requestors don't understand the enormity of "any and all" . Call for clarification.
 - Explain that there may be costs associated with the record request.

RICK'S RULES CONT.

- Ignore the legalese (or the camera)!
- Anyone who deals with the public should be trained on public records law DO'S and DON'TS.
- Don't be afraid to say "I don't know, let me check."
- Make sure someone in the agency is an expert.

RICK'S RULES CONT.

- Don't say NO unless you are sure.
- Responding promptly doesn't mean IMMEDIATELY!
- Give the requester an estimate of how long it will take to gather the records.
- No standing requests.

RICK'S RULES CONT.

- If you have the records and they are not covered by an exemption or confidentiality, produce them!
 - Make sure to check any location where responsive records might be found which includes database systems, email system, share drives, paper files, third party vendors, outside counsel, etc.
- Many agencies get in trouble when they try to hide records because they are embarrassing to someone

Does the public get access to all records that meet the public records definition?

- No, Some records are either:
 - 1) confidential or;
 - 2) exempt from access.



CONFIDENTIAL RECORDS

- Generally CANNOT be released to public – may be released only to those persons or entities designated in the statute
- Agency must take reasonable steps to ensure they are not improperly released

EXEMPT RECORDS

- An “exemption” makes a specified record not subject to access requirements
- Generally, it is up to the discretion of the agency as to whether they want to release exempt records or not.
- Some Exemptions apply to a record for a period of time.

CONFIDENTIAL/EXEMPT EXECUTIVE BRANCH

- 119.071, F.S. - General Exemptions
- Other confidential records can be found throughout Florida Statutes – “are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution”



CONFIDENTIAL RECORD EXAMPLE

§ 119.071(2)(h) 1.b., F.S. –

The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

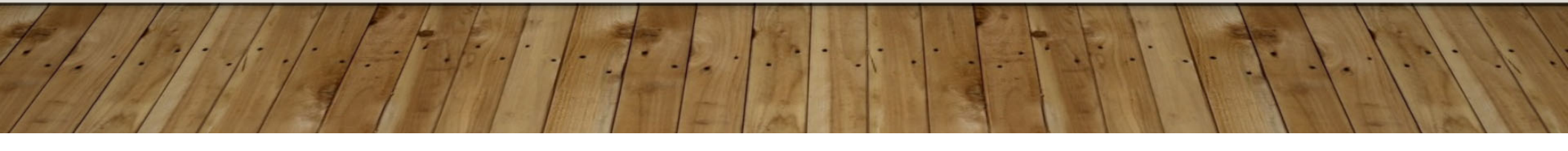
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), or chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

EXEMPTIONS EXAMPLES

- § 119.071(4)(d), F.S. – Home addresses, phone numbers, photographs, and dates of birth, etc.:
 - Current or former Law enforcement, judges, prosecutors, public defenders, firefighters, DCF investigators, Code enforcement officers, county tax collectors, GAL's, DBPR investigators, etc.
- Agencies with this information that are not employers may maintain exemption only upon written request

CLAIMING EXEMPTION/REDACTION

- First, determine if the entire record is exempt or just a portion of the record.
- If entire record is exempt, state the basis for exemption and do not provide record.
- If a portion is exempt, redact the exempt information and state the basis for the exemption.
- Do not restrict access to the part of the record that is not confidential or exempt.



IN 2009, THE LEGISLATURE INCORPORATED THE FEDERAL FAMILY EDUCATION RIGHTS AND PRIVACY ACT (FERPA).

- Section 1002.221(1), F.S., provides that “[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt” from public disclosure and may be released only as authorized in the exemption.“
- Education records” are defined by FERPA to mean “those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.”

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

- 20 U.S.C. § 1232g and 34 CFR Part 99 is a Federal law that protects the privacy of student education records.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record.
- Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance (with opt-out).

TESTING MATERIALS ARE GENERALLY EXEMPT FROM THE DISCLOSURE PROVISIONS OF S. 119.07(1), F.S.

- See, e.g., s. 1008.23(1)(2), F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes).
- See AGO 09-35, concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S.

SCHOOL SYSTEM SECURITY

- Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams 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.

SCHOOL SYSTEM SECURITY

Section 119.071(3)(a), F.S., provides confidentiality for a security or firesafety plan including records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems.

- Includes video footage from surveillance cameras

SCHOOL SYSTEM SECURITY

- Section 943.082(1), F.S., requires FDLE to acquire a mobile suspicious activity reporting tool
- The identity of the reporting party received through the reporting tool and held by the FDLE, DOE, law enforcement agencies, or school officials is confidential and exempt. Section 943.082(6), F.S.
- Any other information received through the reporting tool and held by the above agencies is exempt.

MISCELLANEOUS EXEMPTIONS

- Section 1006.12(8), F.S. - Any information that would identify whether an individual has been appointed as a safeschool officer pursuant to s. 1006.12, F.S., held by a law enforcement agency, school district, or charter school is exempt.

MISCELLANEOUS EXEMPTIONS

- Section 1012.31(3)(a)1., F.S. - The complaint and material relating to the investigation of a complaint against a public school system employee are confidential until the preliminary investigation is either concluded or ceases to be active.

MISCELLANEOUS EXEMPTIONS

- Section 1012.31(3)(a)2., F.S. - Employee evaluations of public school system employees prepared pursuant to cited statutes are confidential until the end of the school year immediately following the school year during which the evaluation was made.
- However, the exemption applies only to the “employee evaluation.”

RICK'S RULES AD NAUSEUM

- Make sure redaction is permanent
- Redact with a scalpel, not a meat cleaver
- Know your Exemptions/Citations
- Cite your Exemptions with Specificity in your Response (§119.07(1)(e), F.S.)

FEES FOR PUBLIC RECORDS

- Executive Branch -
§119.07(4), F.S. authorize and establish fees for copies and labor
- Judicial Branch -
Fla.R.Jud.Admin. 2.420(m)(3)
 - “except for copies of court records... the same as those provided in section 119.07, Florida Statutes.”



FEES FOR PUBLIC RECORDS SPECIAL SERVICE CHARGE

§ 119.07(4)(d), F.S. - An agency may charge a reasonable fee for the extensive use of agency resources – personnel, information technology, or both – in addition to the actual cost of duplication.

- Such fees must be reasonable and based on actual costs incurred.
- “Extensive” is not defined – agencies should have policies in place to define what is extensive, i.e. more than 15 minutes, 30 minutes, 1 hour ,etc.

FEES FOR PUBLIC RECORDS ADVANCE DEPOSIT

- Section 119.07(4), F.S. - The custodian of public records must furnish a copy or a certified copy of the [requested] record upon payment of the fee prescribed by law.
- Custodial agencies are authorized to require the payment of an advance deposit before proceeding with the effort and cost of preparing copies of requested public records.

Malone v. City of Satellite Beach, No. 94-10557-CA-D
(Fla. Cir. Ct. Brevard Co. December 15, 1995)

FEES FOR PUBLIC RECORDS

Chapter 119 does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain public records.



MORE RICK'S RULES

- Many people will want to inspect records because they are too cheap to pay.
- Labor can be charged even for inspection.
- Get paid BEFORE you do the work.
- It's Ok to put a deadline on payment.
 - “If we do not receive payment within 30 days, we will assume you no longer wish to receive the requested records, and we will close your request.”

RECORD RETENTION REQUIREMENTS

- Retention period of a record is the duration of time for which the information should be maintained by an agency.
- Based on federal and state laws and regulations, general administrative practices, and fiscal management principles.
- Generally are minimum retention periods; public agencies may retain their records longer at their discretion.

EXECUTIVE BRANCH

- §119.021(2)(a), F.S., requires the Division of Library and Information Services (DOS) to adopt rules establishing retention schedules and a disposal process for public records.
- §257.36(6), F.S., says that public records can be destroyed or otherwise disposed of “only in accordance with retention schedules established by the division.”

HTTP://DOS.MYFLORIDA.COM/LIBRARY-ARCHIVES/RECORDS-MANAGEMENT/

The screenshot shows a web browser window with the URL <http://dos.myflorida.com/library-archives/records-management>. The page header includes the Florida Department of State logo and navigation links: Corporations | Cultural Affairs | Elections | Historical Resources | Library and Information Services. The main header features the Division of Library and Information Services logo, a description of the division's role, and a search bar with the text "How can we serve you?". Below the header is a navigation menu with links: About Us, Research, Records Management (selected), Services for Libraries, and Contact Us. A language selection dropdown is set to "Select Language". The main content area displays the breadcrumb "Department of State / Division of Library and Information Services / Records Management" and the title "Records Management". Three featured links are shown with images: "General Records Schedules" (image of a calendar), "Records Management Liaison Officers" (image of a person at a computer), and "Forms and Publications" (image of folders and forms).

Florida Department of State | Corporations | Cultural Affairs | Elections | Historical Resources | Library and Information Services

DIVISION of LIBRARY and INFORMATION SERVICES

The Division manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider for the state of Florida.


How can we serve you?

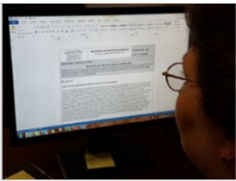
[About Us](#) [Research](#) [Records Management](#) [Services for Libraries](#) [Contact Us](#)

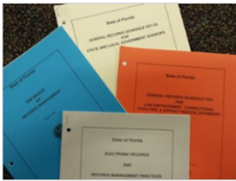
Para español, seleccione de la lista Powered by [Google Translate](#)

Department of State / Division of Library and Information Services / Records Management

Records Management


[General Records Schedules](#)


[Records Management Liaison Officers](#)


[Forms and Publications](#)

LAST OF RICK'S RULES

- If you have the record,
it must be produced
even if it could have
been disposed of under
your retention
schedule.
- Don't tolerate
hoarders!



RESOURCES

Government in the Sunshine Manual
The First Amendment Foundation
336 East College Avenue, Suite 101
Tallahassee, Florida 32301
Phone: 850-224-4555; Fax 850-224-0435
www.floridafaf.org
E-manuals Available!

Florida Attorney General's Website
<http://myfloridalegal.com/pages.nsf/Main/314BA231F89C0C8A8525791B006A54E2>

QUESTIONS?

