

Florida Public Records Law - The “Minimum” Guide

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Q. What is a public record?

A. Section 119.011(12), F.S., defines "public records" to include:

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.

The Florida Supreme Court has interpreted 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**. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless exempted. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). I.e., there is no “draft” exception to the definition.

The term "public record" is not limited to traditional written documents. "[T]apes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission" can all constitute public records. Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." AGO 04-33. *And see National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010).

Some documents do not perpetuate, communicate or formalize knowledge – these are called “transitory messages” due to their short-term value. These are records created primarily for the communication of information not for the perpetuation of knowledge and do not set policy, establish guidelines/procedure, certify a transaction, or serve as a receipt. For example, email messages with short-lived or no administrative value (“thank you”); most voicemails; sticky notes (“fyi” or “please file”); reminder messages (“don’t forget our meeting at 2pm”); office announcements (“holiday potluck sign-up”); and most telephone messages (“So-and-so called – please return her call”). Also in this category are recipient copies of university announcements (daily campus events email). These types of records can be disposed of once they are no longer needed.

Q. Are personal notes public record?

A. Usually not. Personal notes, which are neither shared with anyone nor filed as a permanent record, are not public records. "[U]nder chapter 119 public employees' notes to themselves *which are designed for their own personal use* in remembering certain things do not fall within the definition of 'public record.'" (e.g.) *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records; Inf. Op. to Trovato, June 2, 2009 (to the

extent city commissioner has taken notes for his own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records). These include notes made at a meeting that are kept by the individual solely for later recollection. However, if these non-circulated notes are placed in the file "to perpetuate knowledge," they become public records and are subject to disclosure.

Q. Are there records which are not subject to public disclosure?

A. Yes. There are various categories of documents which are public record because they were sent or received in the course of conducting official university business, but which are not subject to disclosure in response to a public records request because of a specific exemption in the law. Some exemptions that apply often at the University include the following:

- Academic evaluations of employee performance (see Section 1012.91, Florida Statutes).
- Education records, except for "directory information." Directory information includes name, address and telephone number of students, major, dates of attendance and graduation, and information of a similar nature (see Section 1002.225 and 1006.52, Florida Statutes and FERPA). Most of the records the University maintains concerning its students are education records and are confidential.
- Raw research data and other kinds of research records, including proprietary information or potentially patentable information.
- Certain medical information maintained on employees, particularly information pertaining to disability.
- The social security numbers of University employees.
- Records maintained during the course of an investigation of an employee's misconduct or complaint of discrimination while the investigation is in process.

Q. Does the University have a policy addressing the handling of public records requests?

A. Yes. University Policy 2-100.4, "Florida Public Records Act – Scope and Compliance" provides information regarding the receipt and handling of public records requests. University policies are available at <http://policies.ucf.edu>.

That policy outlines how to handle certain types of routine requests (such as request for personnel records or demographic data on students) and also gives guidance on other types of requests.

The Office of the General Counsel can help with any questions relating to a public records request. For media requests, notify News & Information for help.

Q. Has UCF designated a Custodian of Public Records?

A. Yes. The designated Custodian of the University is the Office of the General Counsel. The Custodian can be reached by email at gcounsel@ucf.edu or by U.S. Mail at 4365 Andromeda Loop N. MH360, Orlando, FL 32816-0015. The University Custodian of Public Records is designated in accordance with Fla. Stat. s. 119.12. For purposes of responding to specific requests, the Custodian will work with those offices at the University to provide responsive records. See University Policy 2-100.4 for more information.