

**RECENT CASES AND AGOs DEALING WITH THE GOVERNMENT-IN-THE-SUNSHINE  
LAW  
119 FS and 286 FS**

1. *State v. City of Clearwater*, 863 So 2d 149 (Fla.2003): A newspaper, requested email received or sent by two City employees via government computers. Personal emails sent via government computers were ruled not to be public records and the City's policy of allowing employees to sort their mail into personal and business subjects and only releasing the business emails is permissible. The determining factor of whether a document is a public record subject to disclosure is the nature of the record, not its physical location.
2. Fla. AGO 2003-42 (9/3/2003): A policy created wherein a county asserts a copyright over GIS maps created by the County and requires that an individual seeking to use the GIS maps in a commercial fashion must have a license agreement to do so violates the public records law because the maps are a public records and no such requirement is in Chapter 119.
3. Fla. AGO 2003-41 (9/3/2003): A member of the Human Rights Committee who had a scheduling conflict with the meeting of the board should not be encouraged to participate via telephone conference, and the use of electronic media to participate in board meetings is strictly discouraged unless there are extraordinary circumstances that require such participation. A quorum is required to be physically present if any member is to attend electronically.
4. Fla. AGO 2002-82 (12/11/2002): Committee members with disabilities who are unable to attend meetings physically may participate electronically, so long as quorum is physically present at the meeting site.
5. Fla. AGO 2003-35 (7/31/2003): Although the names, addresses and telephone numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence contained in voter registration records are exempt, the addresses on the ballots for such individuals are public record because the exemption only applies to registration records. – Law is narrowly construed.
6. Fla. AGO 2003-23 (6/6/2003): The provision or sale of social security numbers to a company which creates compilation databases regarding individuals is not a "legitimate business purpose" so as to allow the City to release the information despite the exemption in Chapter 119.
7. 4/23/2003 AG informal opinion to Ms. Helen Spencer: The Government-in-the-Sunshine law requires that all meetings of commissioners be in the sunshine but does not state who can call a meeting. Three members may call meeting without Sunshine violation.
8. *Media General Operation, Inc. v. Feeney*, 849 So. 2d 3 (Fla. 1<sup>st</sup> DCA 2003): Cellular phones were provided to some staff of the Florida House of Representatives by the Republican Party. A newspaper sought the cellular telephone records of staff employees from the House and from the Republican Party, and The House stated no such records existed and the Republican Party refused to turn over the records. The House instructed the staff members to redact their bills to eliminate personal calls and to provide the redacted bills. Those were provided to the newspaper. The newspaper sought the remaining phone records, but the court denied their records request because personal calls fall outside the current definition of public records and were properly redacted.

9. Fla. AGO 2003-03 (1/6/2003): A municipality which does not have adequate facilities to house public meetings cannot enter into an interlocal agreement to hold its meetings outside of the city limits, but can ask the legislature for a special act to allow the City to hold meetings outside its boundaries due to lack of meeting space.
10. *Molina v. City of Miami*, 837 So. 2d 462 (Fla. 3<sup>rd</sup> DCA 2003): The Government-in-the-Sunshine law does not apply to Discharge of Firearms Review Committee, which makes factual findings to provide to the police chief.
11. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2<sup>nd</sup> DCA 2002): The refusal to allow video recording of public meetings violates the statute's spirit, intent and purpose, even if the video recording would cause people to act abnormally if the videotaping would have been unobtrusive.
12. *Homestead-Miami Speedway, LLC v. City of Miami*, 828 So. 2d 411 (Fla. 3<sup>rd</sup> DCA 2002): A final negotiated contract may be approved without public hearing on the topic if there were public meetings allowing public participation and debate during the negotiation process.
13. Fla. AGO 2002-51 (7/22/2002): A City may not adopt a rule of procedure allowing approval of minutes of prior public meetings which does not require that the minutes be read or signed at the subsequent meeting if no changes are made; in fact, it is necessary that a vote to accept or revise and adopt the minutes be taken at a public meeting.
14. *Bruckner v. City of Dania Beach*, 823 So. 2d 167 (Fla. 4<sup>th</sup> DCA 2002): A private meeting with the City attorney regarding amending a resolution as settlement of a lawsuit is exempt from the Sunshine Law, so long as the subject was limited to settlement and strategies, and any violation of the Sunshine Law was cured when the City Commission reexamined the amendment to the resolution at a public meeting before formally approving it.
15. Fla. AGO 2002-40 (6/5/2002): Advisory board members who are appointed by the Board of Commissioners and who are responsible for making recommendations to the Board are subject to voting requirements for the state, county and municipal bodies requiring a vote be recorded for each member present.-See Section 86.012 FS.
16. Fla. AGO 2002-32 (4/22/2002): Use of an online bulletin board by board members to discuss matters that may foreseeably come before the board which does not permit the public to participate online is a violation of the Sunshine Law.
17. Fla. AGO 2002-24 (3/15/2002): Members of an advisory committee may conduct inspection trips without notice or minutes provided no discussion occurs between members on the trip relating to the committee's business.
18. *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners* 810 So. 2d 526 (Fla. 2<sup>nd</sup> DCA 2002): If a Developmental Review Committee made up entirely of staff members performs fact-finding and decision-making duties, the meetings of that committee are subject to the Sunshine Law.
19. *Florida Intergovernmental Risk Management Association v. City of Greenacres*, 804 So. 2d 448 (Fla. 4<sup>th</sup> DCA 2001): Meetings of an intergovernmental organization without proper notice are a violation of the Sunshine Law, and subsequent ratification at a later meeting must be more than perfunctory to correct the violation.

20. Fla. AGO 2001-21 (3/20/2001): Council members may prepare and distribute their own position statements to other council members without violating the Sunshine Law, so long as council members avoid any discussion or debate among themselves on the statements, however, if such statements are a response to another commissioner's statements, those responses would be a violation of the Sunshine Law.

21. Fla. AGO 2001-20 (3/20/2001): A commissioner may email another commissioner with factual information without violating the Sunshine Law so long as the email does not result in the exchange of council members' comments or responses on subjects requiring council action.

22. Fla. AGO 2001-10 (2/22/2001): The City Clerk may not be present during closed litigation strategy-settlement meetings.

23. Fla. AGO 2000-68 (11/17/2000): It is not a violation of the Sunshine Law for elected commissioners to attend other city board meetings and comment on agenda items that may come before the commission for the final action, so long as the city commissioners in attendance do not engage in a discussion or debate about the issues among themselves.

24. Fla. AGO 2004-43 (9/14/2004): Mail addressed to a Mayor or City Council member and received at City Hall may not be forwarded unopened to the private residence of the Mayor or Council member. Such mail is a potentially a public record and should be maintained at City offices.

25. City of Miami v. Post-Newsweek's Stations Florida, Inc. 837 So 2d 1002 (Fla. 3<sup>rd</sup> DCA 2003): Criminal records are not public records during the investigation and only lose their exempt status when they are "required to be given" to the defendant. Release of documents to a defendant makes them subject to disclosure as a public record.

26. Weekly Planet Inc. v. Hillsborough County Aviation Authority 829 So 2d 970 (Fla. 2<sup>nd</sup> DCA 2002): Certain documents prepared by, and solely within the possession of private parties may be public records if they are prepared in connection with a transaction of official business by a governmental agency. A lease of real property by a governmental agency does not necessarily make sub-leases, licenses or other assignments of rights to use public land public records.

27. Fla. AGO 2005-28 (4/28/2005) The city may retain a cost deposit for copying public records if the work has been accomplished even though the records are never retrieved by the person making the deposit. The records custodian may bill the requestor for any shortfall between the deposit and actual cost of copying.

28. Micro Decisions, Inc. v. Skinner 889 So 2d 871 (Fla. 2<sup>nd</sup> DCA 2004) County property maps not subject to copyright protection to allow County Property Appraisers to require licensing agreement from commercial users who wish to resell the maps. Legislature has not exempted these maps from Chapter 119. A requestor's motive for seeking a copy of documents is irrelevant, including the fact that they wish to use them in a commercial enterprise. A proper statute may allow public agencies to hold copyrights. (See #2 above).

29. Fla. AGO 2005-12 (2/9/2005) Public records law does not allow a City to require the use of a code in order for citizens to review email correspondence of the Police Department and Human Resources Department. No automatic delay may be imposed and the City may not use a code in order to frustrate the public's access to its records.

30. Fla. AGO 2005-34 (6/1/2005) A Property Appraiser may not enter into an agreement with a private company to provide public records in which arrangement the company will repackage the information and either share the profits or give in kind services to the Property Appraiser.

31. Fla. AGO 2004-22 (4/30/2004) An anonymous letter containing allegations of misconduct by Village employees constitute public records that must be maintained by the Village. Such records may only be disposed of in accordance with the retention schedules approved by the Division of Library and Information Services of the Florida Department of State.

32. *Timoney v. City of Miami Civilian Investigative Panel* (Fla. 3<sup>rd</sup> DCA 2005) A plan containing comprehensive policies relating to mobilization deployment and tactical operations, at least some of which could be used for future events, is exempt from disclosure under Chapter 119.

33. Fla. AGO 2004-15 (3/24/2004) Audio tape recordings of staff meetings made by a secretary for use of preparing minutes are public records even though the meeting was not subject to the Sunshine Law and there is no legal requirement that minutes be kept. These types of recordings are not "precursors" but were intended to perpetuate the discussion at the staff meeting.

34. *Sepro Corporation v. Florida Department of Environmental Protection* 839 So 2d 781 (Fla. 1<sup>st</sup> DCA 2003) In order to come within the exemption for trade secrets, such request must be made in writing pursuant to the statute. An oral agreement with staff personnel is not sufficient.

35. 9/22/2004 AG informal opinion to Charles Brady: The custodian seeking to delete information from a public record must be able to point to the exemption on which he or she is relying.

36. *Rogers v. Hood* 906 So 2d 1220 (Fla. 1<sup>st</sup> DCA 2005) Unused and un-voted punch card ballots from 2000 Presidential Election are not public records and not subject to preservation or inspection. Unused ballots do not perpetuate, communicate or formalize knowledge.

37. Fla. AGO 2004-18 (4/30/2004) Personal information which would otherwise be exempt (such as for a law enforcement officer) and would enjoy a confidential status is not automatically treated confidentially pursuant to the Florida Election Code (and a real estate transaction recording) unless there is a specific written request for confidentiality.

38. Fla. AGO 2005-27 (4/20/2005) A private entity may be subject to the Sunshine Law, a direct support organization, as defined in Section 104.70 FS is subject to the Government in Sunshine Law.

39. Fla. AGO 2004-32 (6/25/2004) The Sunshine Law is applicable to private organizations when the private entity has been created by a public agency, where there has been a delegation of the public agency's governmental functions, or when the private organization plays an integral part in the decision making process of the public agency. The Sunshine Law applies to official corporate governance meetings of individual Boards of Directors of volunteer fire departments that provide fire fighting services to and use the facilities and equipment acquired with public funds from Escambia County.

40. Fla. AGO 2005-06 (2/9/2005) It is the entire decision-making process to which the Sunshine Law applies and not merely a formal assemblage of a public body at which voting to ratify an official decision is carried out. Committees composed of City staff may be subject to the requirements of the Sunshine Law. When a staff member is delegated the authority to make recommendations to a board or official, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. A committee that is an integral part of the decision-making process falls within the Sunshine Law. A Development Review Committee composed of several City officials and representatives of various City departments is subject to the Government in Sunshine Law.

41. 4/7/2005 AG informal advisory opinion to Virginia Cassady: This is an extended opinion discussing when the Mayor as the Chief Executive Officer can and cannot meet with individual City Council members. In instances when the Mayor is a member of a City Council any discussions between the Mayor and another Council member would be subject to the Sunshine Law. This is true when the Mayor is not a member of the Council but has the authority to break a tie vote. This opinion does say that the Mayor can participate in the discussion on a matter of public business without subjecting himself and a Council member to the Sunshine Law under certain circumstances. This opinion extensively discusses the Sunshine Law when the Mayor is the Chief Executive Officer of the City. The particular powers and the nature of the decision process are factually important in the outcome. Compare this to the Dascott opinion below.

42. 1/6/2005 AG informal opinion to Scott L. Knox, Esquire: The Sunshine Law covers the "inquiry and discussion and discovery stages" of meetings of public bodies and advisory lay groups of citizens serving as an arm of the Town Council by serving part time as the alter ego of the Council to make tentative decisions subject to the Sunshine Law. Those to whom public officials delegate de facto authority to act on their behalf in the formulation, appropriation and promulgation of plans on which foreseeable action will be taken are applicable to the Sunshine Law. The AG found that in this particular instance it was a close question as to whether this private entity was subject to the Sunshine Law, but concluded that since the Sunshine Law must be broadly construed to affect its remedial and protective purpose, that when in doubt, a collegial body should follow the Sunshine Law.

43. Fla. AGO 2005-07 (2/9/2005) Advisory committees involved only in fact finding are not subject to the Sunshine Law. If such a committee does both fact finding and has the power to make recommendations, then the committee is participating in the decision making process and is subject to the Sunshine Law.

44. Fla. AGO 2005-18 (3/29/2005) The meetings between a voting member and a member who is an ex officio non voting member of a committee are subject to the Sunshine Law. It is the entire decision making process to which the Sunshine Law applies. The statute is to be applied to discussions and deliberations as well as to formal action.

45. Fla. AGO 2004-35 (7/2/2004) A City's risk management committee established by City ordinance to review certain proposed tort claims settlements under the City's risk management program is not subject to the Sunshine Law.

Pursuant to Section 286.011 (8) FS a City's attorney is to advise the City at a public meeting that he or she desires advice concerning litigation. This statutory requirement cannot be satisfied by a previously published and posted notice of the meeting of the City Commission that includes a statement that the attorney seeks the board's advice.

46. *Dascott v. Palm Beach County* 877 So 2d 8 (Fla. 4<sup>th</sup> DCA 2004) A pre-termination panel convened to review an employee's proposed termination. The Court found that this was a "board or commission" within the meaning of the Sunshine Law even though the sole decision making authority was in the hands of the department head. The big issue in this case was delegation of authority. The Court says "the department head in charge of appellant's pre-termination conference chose to share this authority with other members of the panel." Thus, the panel exercised a part of the decision making function and even though this was not in accordance with the county ordinance, the department head deliberated with the panel to determine whether to terminate the employee. The court decided this was a "joint decision" and had to be in the Sunshine. This case is difficult law and I think the court recognized it as such and specifically said on a motion for rehearing that it was limited to its facts. Nevertheless, it is a dangerous precedent. The case gives a good discussion on several fact situations where administrators convene a panel to assist in the decision.

47. Fla. AGO 2003-53 (11/3/2003) The City Commission of the City of Treasure Island may add topics to the agenda of a regularly noticed meeting while that meeting is being conducted and take formal action on those matters.

48. Fla. AGO 2004-58 (11/23/2004) In a declared state of emergency, two or more County Commissioners made coincidental unscheduled appearances to discuss with staff emergency issues that may come before the County Commission. The required notice for such a meeting clearly may be different than the required notice for a regular meeting. Emergency meetings should be afforded the most appropriate and effective notice possible under the circumstances. The Commissioner's discussion with staff on matters that do not require action by the County Commission would not be subject to the Sunshine Law.

49. Fla. AGO 2005-13 (2/16/2005) The City of Coral Gables may not require a person to attend public meetings of its boards held in facilities where sensitive documents may be stored to present identification as a condition of attendance. Such requirement would have a chilling effect. Also see AGO 96-55-police pension board meeting in police building (and 1999 informal opinion to Campbell regarding luncheon meetings). Certain security measures such as metal detectors or having baggage searched are permissible.

50. *Leach-Wells v. City of Bradenton*, 734 So 2d 1168 (Fla. 2<sup>nd</sup> DCA 1999): Committee reviewing RFPs for construction of a municipal complex failed to meet to short-list the top three firms. Court held that even though written evaluations were all in accord with each other on top three firms, a meeting is necessary and therefore, a violation of the Sunshine Law occurred. Short-listing was a formal action that was required to be taken at a public meeting.

51. *Rowe v. City of Cocoa, Florida*, 2003 WL 22102150 (M.D. Fla.) (2003): A City does not violate the First Amendment when it restricts public speakers to the subject at hand. The City has a substantial interest in maintaining orderly, efficient meetings. Limiting the class of speakers based on a bona fide residency requirement is one method of insuring meetings remain efficient.

52. *State of Florida v. Webb*, 768 So 2d 602 (1<sup>st</sup> DCA 2001): A dilatory response to a request for access to and copies of public records subjected a school board member to a conviction for a first degree misdemeanor. In this case, the school board member began serving her sentence. This case can give some insight into what type of delay will be tolerated by the courts in a criminal proceeding.

53. Location, location, location: See AGO informal opinion to Campbell. Luncheon meetings have a chilling effect on the public's willingness to attend a public meeting.

See Fla. AGO 96-55 Police Pension Board holding a meeting in a conference room located in the building that could be accessed by the public only by providing identification. This opinion also says that the Police Pension Board could not condition the release of its records upon a vote of the board.

54. Additional advisory committee opinions; AGO 2002-24 (Sanibel Vegetation Committee) AGO 2005-05 (advisory group to chief of police to make recommendations concerning the police department); The Vegetation Committee was determined to be fact-finding only. Since the committee would make recommendations to the police chief they were determined to be participating in the decision making process and therefore, subject to the Sunshine Law.

55. Lyon v. Lake County, 765 So 2d 785 (5<sup>th</sup> DCA 2000): The case discusses the difference between a strictly advisory committee, referred to as the County Pre-technical Committee, which was determined not to be subject to the Sunshine Law and a Technical Review Committee, since it was created by ordinance and was part of the decision making process.

119 FS - perpetuate, communicate, formalize  
286 FS - notice, minutes, public access