



# FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

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19 December 2012

The Honorable Michael S. Carter, Mayor  
The Honorable Terry Leary, City Manager  
City of Lake Wales  
P.O. Box 1320  
Lake Wales, FL 33859-1320

Dear Mayor Carter and Ms. Leary:

In response to recent news articles and calls to the First Amendment Foundation regarding the City of Lake Wales' policies for responding to public records requests, I would like to clarify the legal requirements under chapter 119, F.S., Florida's Public Records Law.

Section 119.07(1)(a), F.S., stipulates that "*Every person* who has custody of a public record" must allow that record "to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." (emphasis added) The phrase "custodian of public records" is statutorily defined as the elected or appointed official "charged with the responsibility of maintaining the office having public records, or his or her designee.

Florida courts have stated that the statutory reference to the records custodian doesn't alter the "duty of disclosure" imposed by the public records law upon "[e]very person who has custody of a public record." *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4<sup>th</sup> DCA 1996) (emphasis in the original) Thus, the term "custodian" for purposes of the law refers to all city employees who have it within their power to release or communicate public records. *See Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4<sup>th</sup> DCA 1998) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5<sup>th</sup> DCA 1991]). It is the responsibility of the "custodian of public records" to ensure that "every person who has custody of a public record" understands the requirements and responsibilities imposed by the public records law.

Additionally, it's well settled in Florida that a government agency can't impose rules or conditions on the right of access which operate to restrict or circumvent that right. *See, e.g., Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) and AGO 75-50. Such impermissible conditions would include creation of a conduit through which all public records requests must flow.

If the City wants to ensure that the City Manager is aware of all public record requests received by the City, an internal policy that requires all employees who receive such requests inform the Manager is perfectly acceptable, so long as the request to inspect or copy the City's public

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records is not delayed in the process. What is legally unacceptable, in contrast, is a policy that requires all public records requests received by City employees be routed through the City Manager such that only she responds to requests to inspect or copy the City's public records.

We greatly appreciate your attention to our concerns. Should you have any questions or need additional information or clarification, please don't hesitate to contact me.

Sincerely,

*Barbara A. Petersen*

Barbara A. Petersen, President

Cc: Jon Kaney, FAF General Counsel