



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

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13 March 2013

The Honorable Steven Abrams, Mayor
Mayor of Palm Beach County
301 N. Olive Avenue
West Palm Beach, FL 33401

Dear Mayor Abrams:

Mr. Stanley Voice has contacted the First Amendment Foundation expressing concerns regarding Palm Beach County's policy that all public records requests must be made to Mr. David Frye in the County's Public Affairs Office. Mr. Voice has provided us with copies of emails from county staffers instructing Mr. Voice to direct all public record requests to Mr. Frye. It is our understanding that Mr. Voice has been making public record requests of Palm Tran, and although no one in the County seems to dispute the fact that Palm Tran has the records requested, Mr. Voice is asked not to "contact Palm Tran staff with records requests." (Email from David A. Frye to Stanley Voice, 10/17/2012) It is our opinion that this policy forms a bureaucratic barrier that dissuades citizens Floridians from exercising their right to public records under chapter 119, F.S., and Article 1, section 24(a) of the Florida Constitution. We respectfully suggest that Palm Beach County facilitate access to public records by amending its policy to conform to the requirements of Florida's Public Records Law.

Section 119.07(1)(a), F.S., stipulates that "*Every person who has custody of a public record shall permit the 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 term "custodian of public records" is defined in s. 119.011(5) as "the elected or appointed officer charged with the responsibility of maintaining the office having public records, or his or her designee." This allows the custodian of public records, or a person having custody of public records, to designate another officer or employee of the agency to permit the inspection and copying of public records. However, the Florida courts have found that the statutory reference to the "custodian of public records" does not alter the "duty of disclosure" imposed by s. 119.07(1)(a) upon "[e]very person who has custody of a public record." *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996) (emphasis in the original).

For the purpose of providing access to public records, the term "custodian" refers to all agency personnel who have custody or control of public records, or the legal responsibility for its care, keeping or guardianship. *See Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5th DCA 1991]). Although the *Mintus* court made a distinction between those agency employees with temporary possession of a public record, the unanimous three-judge panel emphatically stated "[t]his Court is *not holding* that a public record request must be made upon the statutorily designated custodian or his designee." *Id.* at 1361 (emphasis added).

The Florida Supreme Court has found that the phrase "reasonable conditions" as used in s. 119.07(1)(a), F.S., "refers not to conditions which must be fulfilled before review [of a public record] is permitted but to

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reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review.” *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). Agencies are prohibited from imposing rules or conditions which restrict or circumvent a person’s right of access to public records. *See* AGO75-50 and Inf. Op to Cook, May 27, 2011.

Thus, if a requestor makes a public records request of Palm Tran staff and the staff has custody and control of the records requested, the requestor cannot be required to make that request at the County’s Public Affairs Office. If Palm Tran staff has questions about the request made, or needs guidance in fulfilling the request, staff can seek such guidance from the Public Affairs Office. Additionally, the County is free to adopt a policy which requires that Palm Tran staff inform the Public Affairs Office of all public records requests received, but cannot require that a requestor make a request to that office or delay the request while complying with such a policy.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable Priscilla A. Taylor, Vice Mayor, District 7
The Honorable Hal R. Valeche, Commissioner, District 1
The Honorable Paulette Burdick, Commissioner, District 2
The Honorable Shelley Vana, Commissioner, District 3
The Honorable Mary Lou Berger, Commissioner, District 5
The Honorable Jess R. Santamaria, Commissioner, District 6
Robert Weisman, County Administrator
Jon Kaney, General Counsel, First Amendment Foundation