First Amendment Foundation
Protecting Your Right to Know for 30 Years!

Teacher's Guide to Florida's
Open Government FCAT

1) In what year was Florida's Sunshine Law (requiring open meetings and reasonable notice of government boards and commissions) passed by the Legislature?
   A. 1986
   B. 1925
   C. 1972
   D. 1967

Answer: D. Florida's very first open meetings law, which applied only to municipalities, was enacted in 1905. The law was virtually ignored, however, and was repealed in the 1950s. Section 286.011, F.S., requiring that all meetings of any board or commission be open and noticed to the public, was passed in 1967.

2) In what year was Florida's Sunshine Amendment, requiring financial disclosure by all public officials, approved by the voters?
   A. 1986
   B. 1905
   C. 1972
   D. 1967

Answer: C. Florida Governor Reubin Askew was dedicated to rooting out public corruption, and when the Legislature didn't respond to his request for legislation requiring "full and public" financial disclosure by all public officials, Governor Askew took the issue directly to the people, launching a petition drive to put a constitutional referendum before the voters. Article II, section 8, of the Florida Constitution, requires public officers and candidates to file "full and public disclosure of their financial interests." Elected public officials and candidates for such offices must file disclosure of their campaign finances.

3) A recent Department of Justice survey studied the levels of government corruption in all 50 states. How did this study rank Florida in terms of government corruption?
   A. Average
   B. Squeaky Clean
   C. Back of the pack
   D. Top of the heap: worse than NJ!

Answer: D. A 2013 report from the Public Integrity Section of the U.S. Department of

Justice found that Florida leads the nation in public corruption. Wow. Number one in the nation, beating out Illinois, Louisiana, and New Jersey, states with well-known and historical reputations for dishonest and sleazy public officials. The DOJ report focuses on crimes involving abuses of the public trust by government officials, and the current state rankings are based on the number of state officials convicted of public corruption charges since 2000.

It gets worse. According to a new (2015) survey from the Sunlight Foundation, a Washington-based public interest watchdog group, Florida ranks last when it comes to the transparency of lobbyist influence. While three states received an F — Florida, West Virginia and Nevada — Florida received the lowest score possible, a -6.

4) Which of these is NOT a procedural requirement for all boards and commissions subject to Florida's Sunshine Law? [check all that apply]

A. Meetings of two or more members of boards or commissions must be open to the public.
B. Reasonable notice of such meetings must be given.
C. Minutes of meetings must be taken.
D. Meeting venues must be accessible.
E. Parking for the public must be free.

Answer: E. Section 286.011, F.S., commonly referred to as Florida's Sunshine Law, requires that all meetings of any collegial body – a board, a commission, a committee, etc. – at which public business is to be transacted or discussed be open and noticed to the public and that minutes be taken. Such meetings must be held in locations freely accessible by the public.

5) According to another national survey, the *State Integrity Investigation,* how did Florida rate with regard to openness and transparency?

A. A-
B. D+
C. C
D. B-

Answer: B. Despite our reputation for having the best, most effective open government laws in the United States, Florida received a miserable D+ for access to government information in the 2013 *State Integrity Investigation*, a collaborative project of the Center for Public Integrity, Global Integrity, and Public Radio International. Florida received a perfect score for our laws guaranteeing access to government records, but in scoring whether those laws are effectively enforced, we barely managed a passing grade. There is no agency in Florida responsible for enforcing our right of access to government information, which means that a citizen wrongly denied access to government information is sidelined into civil court to force agency compliance with the constitutional right of access.

6) Of the following examples, which are NOT meetings generally subject to Sunshine? [check all that apply]

A. Cocktail receptions and social events.

B. Any sporting event, whether professional or amateur.

C. Fact finding meetings where no votes are taken, or public business is not transacted or discussed.

D. Meetings of a public commission held outside the state of Florida, or beyond the 15-mile coastal boundary.

E. Meetings of a public commission held in airport transit facilities or hotels on airport property.

Answer: A, B, C. It should be noted, however, that although the sunshine law doesn't generally apply to social events, the law *does* apply to any discussion of public business between two or more members of the same board or commission. So if, for example, two members of the Tallahassee city commission are sitting in the same Skybox at the FSU/UF football game, and start talking about city business, they are in violation of the Sunshine Law. Also, the fact-finding exception to the Sunshine Law does not apply to boards or commissions with final decision-making authority.

7) True or False: Florida's constitution requires that legislative meetings be open to the public but the Legislature is held to a lesser standard of openness than school boards, county commissions, and town councils.

Answer: True. Article III, section 4(e) of the Florida Constitution requires that all *pre-arranged* meetings of *more than two* legislators, the purpose of which is to discuss legislative business or to take action, must be *reasonably* open to the public. And making matters even worse, this right of access is specifically subject to the sole interpretation, implementation and enforcement by the Legislature.

8) True or False: Florida's constitution guarantees a right of access to the records of all three branches of state government – the executive, the legislative, and the judicial.

Answer: True. Article I, section 24 of the Florida Constitution was overwhelmingly approved by Florida voters in the 1992 general election and became effective July 1, 1993. The constitutional right of access to public records, section 24(a), specifically applies to all three branches of our government.

9) True or False: In Florida, each custodial agency can decide what public records are subject to disclosure based on a balancing of interests.

Answer: False. Under Florida's public records law, a custodial agency can deny access to public records only if there is a specific statutory exemption. Only the Legislature can create exemptions to our constitutional right of access and there is no balancing of interests by the custodial agency or even the courts. All public records are presumed open and accessible unless specifically exempted by law.

10) What is the general fee agencies can charge for paper copies of requested records under Florida's public records law?

A. 15 cents/page
B. $1/page
C. A flat fee: $100 up to 1,000 pages
D. 50 cents/page

Answer: A. Section 119.07(4)(a), F.S., allows an agency to charge 15 cents/page for paper copies up to 8 ½ x 14 inches, plus an addition 5 cents for a two-sided copy. For all other copies, an agency may charge no more than the actual cost of duplication, which is defined as the cost of the materials actually used to duplicate the record. Labor and overhead costs are not included.

11) Florida law allows an agency to charge an "extensive" use fee if a request to inspect or copy the agency's public records requires an extensive use of its resources. "Extensive" is defined as:

A. 30 minutes or more
B. 2 hours or more
C. "One Mississippi"
D. None of the above – the word "extensive" is not defined in law and each agency determines what is an extensive use of its resources.

Answer: D. Section 119.07(4)(d), F.S., allows an agency to charge a reasonable fee based on actual costs incurred if a public record request requires an extensive use of agency resources, whether personnel or information technology, or both. "Extensive" is not defined in the law, so agencies must define the term if they impose an extensive use fee. Definitions range, generally, from 15 minutes to as long as 4 hours.

12) <u>True or False</u>: If a public record contains both exempt and non-exempt information, the custodial agency must delete that which is exempt, and provide the requestor with a written statement including the statutory citation authorizing the deletion and an explanation why the exemption applies.

Answer: True. Section 119.07(1)(d), F.S., states that if a public record contains both exempt and non-exempt information, the agency must redact – delete – that which is exempt and provide access to the remainder. Under s. 119.07(1)(e), the agency must provide the exact statutory citation authorizing the redaction, and s. 119.07(1)(f) requires an agency to put its denial in writing if requested to do so, and state "with particularity" the basis for its conclusion that the <u>exemption</u> applies.

13) In Broward County, a reporter made a public record request for all email correspondence sent or received by agency employees over a period of three months that contained six specific words or phrases. How much was the reporter asked to pay in order to obtain copies of the requested records?

A. $200

B. $0 – The reporter is providing a public service.
C. $399,000
D. $1,500

Answer: D. A reporter made a request of the Broward County Sheriff Office for emails received or sent by all deputies over the past three months containing half a dozen key search words. The BCSO responded by telling the reporter his request would cost $399,000 and that it would take four years to compile the requested records. Excessive fees for copies of public records are an effective barrier to our constitutional right of access.

14) True or False: All text messages relating to public business sent or received by county commissioners using their personal communication devices are public records subject to disclosure.

Answer: True. A "public record" is defined as any material intended to perpetuate, communicate, or formalize knowledge having to do with public business, regardless of physical form, characteristics, or means of transmission. A text message relating to public business is a public record subject to disclosure and retention requirements regardless of whether the text message was sent or received on a personal communication devise.

15) Governor Rick Scott and the Cabinet were sued for a potential sunshine violation relating to the ouster of FDLE chief Gerald Bailey. The lawsuit was settled. The Governor also settled a public record lawsuit brought by a private attorney from Tallahassee. How much did Florida taxpayers pay in legal fees to defend the Governor and Cabinet for a violation of Florida's constitutional right of access to government meetings and records?

A. $0 – The Governor personally picked up the tab.
B. Right around $1.3m.
C. Less than $50,000.
D. More than $2,000 but less than $25,000.

Answer: B. That's right – Florida taxpayers have spent $1.3 million to defend Governor Scott and the Cabinet for violating our constitutional right of access to the records and meetings of our government. We paid about $365,000 to settle the open meetings lawsuit brought against the Governor and Cabinet, and an additional $965,000 to settle the public record lawsuit. Total = $1,330,250

BONUS QUESTION: What are the five freedoms guaranteed by the First Amendment?

1. Speech
2. Religion
3. Press
4. Assembly
5. Petition Government for Redress of Grievances