

Dr. Marta Pérez, Member

SUBJECT: PUBLIC RECORDS

**COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY
ENGAGEMENT**

**LINK TO DISTRICT
STRATEGIC PLAN: IMPROVE STAKEHOLDER SATISFACTION**

Miami-Dade County Public Schools processes a large number of requests for information from the community, media, and various other stakeholders. Such requests must be worded carefully and specifically in order to yield the desired information; individuals submitting requests must therefore be knowledgeable on Florida's public records laws, district practices, and availability of data prior to submitting a request. School Board Rule 6Gx13- 8C-1.18, Board Records – Public Access, provides scant useful information to guide the public in the process.

At the January 17, 2007 meeting, the School Board approved agenda item B-16, proffered by Ms. Perla Tabares Hantman, which requested a report on the procedures for accessing public records. The report outlined the procedures currently in place and summarized the information commonly exempted from public disclosure.

Nevertheless, an incorrectly-worded request may not produce the wanted information and/or result in high charges for producing certain information. On the other hand, viewing records is free of charge, a fact that is often not expressly communicated to the public. Another fact is that the district routinely produces many computer-generated reports which may provide all if not most of the information, also free of charge except for cost of duplication. Florida Statute 119.07(4)(d), Public Records, states that "a special service charge" may be assessed only if "the nature or volume of public records requested is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance", and that such a service charge "shall be reasonable and based on the cost incurred . . ." (See attachment for complete language.)

As a school district charged with the custody of public records, we should never expose ourselves to the unnecessary expense and public embarrassment of defending a public records lawsuit, as has unfortunately happened recently.

In an effort to foster transparency and facilitate providing public records to the stakeholders, the district should make every effort to disclose to the public all available options for obtaining the desired information at the lowest possible cost. If the retrieval of

information results in excessively high costs then the district should take a closer look at the methods it employs to maintain and retrieve certain records.

On Friday, November 16, 2007, Ms. Perla Tabares Hantman, Board Member, sent a press release to the Board of an initiative proposed by Governor Charlie Crist (press release also attached). The Executive Order 07-242 requires all state agencies to adopt an Open Government Bill of Rights to protect citizens' access rights to public records.

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The press release reads:

"The Governor signed the Bill of Rights into effect through Executive Order 07-242.

"The executive order requires all state agencies to adopt an Open Government Bill of Rights to protect citizens' access rights to public records. The executive order calls for each agency to post its Bill of Rights in a clear place on its website and in its headquarters. It must contain statements that make the process of making a records request clearer, such as a reminder that requests do not have to be made in writing and a statement highlighting the public's right to respect."

The Governor also addressed Internet access to state agency information. The executive order requires that agencies create a site that directs users on how to make a public records request, learn more about Florida's open government laws, include organizational charts, contacts, budget, contracts and other legislative information.

**ACTION PROPOSED BY
DR. MARTA PÉREZ:**

That the School Board of Miami-Dade County, Florida direct the Superintendent to:

1. designate a point person that can be a specialist in providing meaningful assistance to the stakeholders requesting public records;
2. amend School Board Rule 6Gx13- ~~8C-1.18~~, Board Records – Public Access, to delineate the various options for obtaining records that are available to the public at the lowest possible cost; and
3. adopt the recommendations made by Governor Charlie Crist in his Executive Order 07-242 which includes the Open Government Bill of Rights to protect the citizens' access to public records along with the other listed recommendations.

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ATTACHMENT

The 2007 Florida Statutes

119.07 Inspection and copying of records; photographing public records; fees; exemptions.--

(1)(a) 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.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. [119.071](#)(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. [119.071](#)(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8¹/₂ inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. [102.168](#), the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public

records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. [286.011](#). The exemption from s. [286.011](#) must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

GOVERNOR'S PRESS OFFICE
(850) 488-5394

TALLAHASSEE – Governor Crist today announced two new open government initiatives that will improve Floridians' ability to access public documents and meetings. The first initiative involves a Bill of Rights for all Floridians trying to access public records. The list of rights was compiled by the Commission on Open Government, established by the Governor on June 19, 2007, by Executive Order 07-107. The second initiative involves improving Internet access to state agency contact information.

"These initiatives are just one more way we are working to create a more open government for the people of Florida, our boss," said Governor Crist. "Our goal is to increase access for all Floridians so they have the tools needed to hold government accountable. By creating a culture that fosters public trust and confidence, we become a government truly operating in the sunshine."

At the Commission on Open Government's first meeting on August 22 and 23, 2007, public testimony revealed common issues citizens have encountered when trying to obtain public records. In response, the Governor initiated the Open Government Bill of Rights, which facilitates easier access to public meetings and documents, and encourages agencies to exhibit greater respect when interacting with citizens. The Governor signed the Bill of Rights into effect through Executive Order 07-242.

The executive order requires all state agencies to adopt an Open Government Bill of Rights to protect citizens' access rights to public records. The executive order calls for each agency to post its Bill of Rights in a clear place on its website and in its headquarters. It must contain statements that make the process of making a records request clearer, such as a reminder that requests do not have to be made in writing, and a statement highlighting the public's right to respect.

The second initiative introduced by the Governor relates to Internet access to state agency information. Agencies under the Governor's purview have created direct links from their individual homepages to a website that directs users on how to make a public records request or learn more about Florida's open government laws. These new websites will also include organization charts, open government contacts, budget information, contracts with vendors and providers, legislative budget requests and legislative priorities.

In his first Executive Order issued on January 3, 2007, Governor Crist established the Office of Open Government and charged it with providing the Governor's Office and all state agencies the tools necessary to serve the people of Florida in a professional and efficient manner. The executive order also instituted the Plain Language Initiative to ensure all announcements, publications and other documents sent by the Governor's Office or state agencies contained clear and concise instructions and information.

For a list of all state agency open government websites, please visit
http://www.flgov.com/og_agency_ogpages

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 07-242

WHEREAS, an open and accessible government is the key to establishing and maintaining the people's trust and confidence in their government and its ability to effectively serve its citizens; and
WHEREAS, the state of Florida has a long history of providing public access to the records and meetings of public entities; and
WHEREAS, Florida must continually strive to be a national leader in open government reform; and

<http://www.flgov.com/release/9648>

11/16/2007

WHEREAS, on June 19, 2007, by Executive Order 07-107, I created the Commission on Open Government to review, evaluate, and issue recommendations regarding Florida's public records and public meetings laws; and

WHEREAS, the Commission on Open Government met on August 22-23, 2007 and received public testimony requesting the need for greater ease of access to public meetings and documents, the need to increase the respect with which our government agencies interact with our citizens, and create a culture which will build the people's trust and confidence in their government and its ability to serve the people; WHEREAS, streamlining and clarifying applicable laws and policies will result in making government more open, accessible, and accountable to its citizens; and

NOW, THEREFORE, I, CHARLIE CRIST, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1.

All agencies under the direction of the Governor shall adopt an Open Government Bill of Rights to guarantee that the right of access to public meetings and records is safeguarded and protected. This Bill of Rights shall be conspicuously posted on the agency's website and at the agency's headquarters. It shall include the following provisions:

A. A statement that the public is entitled to be treated with respect, courtesy, and professionalism.

B. A statement that a public records request does not have to be made in writing unless a specific statute requires otherwise. In that case, the statute imposing such a requirement shall be cited.

C. A statement that receipt of all public record requests shall be acknowledged promptly and in good faith as required by section 119.07(1)(b), Florida Statutes.

D. A statement that fees shall not exceed the amount authorized by section 119.07(4), Florida Statutes, unless another amount is expressly authorized by law. In that case, the statute imposing such a requirement shall be cited.

E. A statement that the public has the right to an itemized invoice of proposed fees or fees charged.

F. A statement recognizing that access to public records and meetings are rights secured under sections 119.07(1) and 286.011, Florida Statutes and Article 1, Section 24, Florida Constitution.

Section 2.

All state agencies under the direction of the Governor are directed, and all other state agencies are requested, to provide such assistance to the individuals carrying out the directions in this Executive Order as may be requested in furtherance of the objectives described.

IN TESTIMONY WHEREOF, I have
hereunto set my hand and caused the Great
Seal of the state of Florida to be affixed, at
Tallahassee, this 15th day of November, 2007.

Charlie Crist
Governor

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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