

Tips for Reacting to an "In-Person" Public Records Request Under Florida's Public Records Act

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BACKGROUND

Under Florida's broad Public Records Act ("the PRA"), chapter 119, Florida Statutes, any person - whether an individual or a legal entity - can request access to or copies of public records in the custody of state agencies, state subdivisions, or local government agencies (jointly "Agency"). Most such requests are submitted in writing, but they do not have to be. On occasion, however, someone will visit an Agency office or facility and make a public records request in person. With the adoption of Chapter 2016-20, Laws of Florida, a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency.

It is important that the responses to all public records requests - regardless of whether made in-person, in writing, or by some other means - be coordinated by the person assigned by the Agency as responsible for the supervision, maintenance, and control of the materials sought ("the Designated Custodian"). The Designated Custodian often is not the employee who has physical possession of materials. Each Agency should identify a Designated Custodian. Public records requests received by an employee other than the Designated Custodian should immediately be forwarded to the Designated Custodian for further handling.

The individual making an in-person request ("the requester") will often infer - whether intentionally or not - that the employee has the legal obligation to provide copies or allow access to the materials sought. The requester may ask to immediately inspect and/or photograph documents or other materials that are physically maintained at the same location where the request is being made. Alternatively, the requester may ask the employee to email the materials to him or her.

In virtually every instance, no such obligation exists. Such in-person requests are usually made to an employee whose workplace is easily accessible to members of the public. The employee may also be selected by the requester because the requester believes that the employee's work station is in close proximity to the records being requested. For example, a receptionist might be asked for a copy of the visitors' log or an administrative assistant might be asked for the calendar of an Agency official. In those instances, the employee must clearly state that he or she is not the records custodian.

It is equally important that the employee not inadvertently make statements suggesting that the Agency will not comply with the PRA.

HOW TO REACT: TIPS

The tips below provide guidance to employees who are not Designated Custodians, but who frequently receive such requests. The suggested responses in italics below are provided to illustrate that statements made to a requester should be simple and straightforward, but should not imply either that the PRA request is being denied or how and when the requested materials will be made available. If the requester presses for an answer on those issues, the employee should consistently state that the Designated Custodian will respond to the request within a reasonable period of time.

#1 Don't panic.

Most people making public records requests have a legitimate reason for wanting to see or obtain copies of specific materials. However, some requests may be made to test the Agency's compliance with the PRA. The requester's motives are irrelevant. Under Florida law, the right of access to public records applies regardless of the reasons for seeking such access.

While the PRA is very broad, access to all Agency documents and other materials is not completely unrestricted. Some materials are not public records. Some fall under one or more of the numerous exemptions to the requirement that records be accessible to the public. Even when material is a public record and is not subject to an exemption, the nature of the request being made often requires the requester to reimburse certain costs incurred by the Agency and/or requires that the Designated Custodian make special arrangements for providing access to the materials.

In short, each public records request must be carefully considered so that the Agency response fully complies with applicable law. This is the role of the Designated Custodian, sometimes in consultation with the Agency's attorney or other personnel who are knowledgeable about the materials and the PRA.

#2 Tell the requester that you are not the records custodian.

I am not the custodian of any of the public records of an Agency. [Name of Designated Custodian] has been designated as the custodian of all public records of an Agency.

The PRA imposes responsibilities on the custodian of public records, including the responsibility to provide access to or copies of public records (unless there is a specific statutory exemption). However, not every employee of an Agency is a custodian. Even documents or materials that are in close physical proximity to the employee's work station are not officially in his or her custody. For example, a visitor's sign-in log may be positioned on a ledge on the receptionist desk. Nonetheless, the receptionist is not the custodian of the sign-in log.

The employee who receives an oral public records request is required to identify the Designated Custodian. This need not be a specific individual but could, instead, be a specific position or office.

#3 Acknowledge receipt of the public records request, but offer no specific indication of whether, how, or when the records will be made available.

I understand that you are making a public records request. The records custodian will respond to your request.

The PRA requires prompt acknowledgement that a public records request has been received. This acknowledgement need not be in writing, although the Agency is advised to provide written acknowledgement within a few days of receiving the request. The employee need merely state his or her understanding that a public records request is being made.

The Agency has an obligation to permit access to or copies of public records as follows: 1) at a reasonable time; 2) under reasonable conditions; and 3) under the supervision of the Designated Custodian or the custodian's designee. Depending on the nature of the materials requested, the time and conditions for granting the request that are reasonable and the need for supervision will vary greatly. The employee should offer no opinion regarding any of these factors. Instead, the Designated Custodian - or other Agency personnel with whom the custodian consults - will respond to the requester regarding the time and conditions for providing access.

#4 Get a written description of the materials being requested.

Please provide a written description of the materials you are requesting. If you prefer not to make your request in writing, please state your request again, so that I can write it down to make sure the public records custodian receives an accurate description of your request. [Then read your description of the request back to the requester].

The requester is not required to submit the request in writing. In order to properly respond to the request, however, the Designated Custodian needs to know how the requester characterizes the

materials sought. There may be instances when the description is vague or extremely broad. There may even be occasions when the employee is relatively certain that no such materials exist. However, the employee should refrain from offering that information or giving any response regarding the nature of the materials requested. Instead, the employee should simply make an accurate report of what the requester has asked for. The Designated Custodian or a person appointed by the Designated Custodian should be the one to follow up with the requester regarding the substance and scope of the request.

#5 Ask how the requester would like to be contacted with the Agency's response to the request.

You can contact [the Designated Custodian] at [telephone number or email address] to inquire about the status of your request or, if you prefer, you can leave your contact information and [he or she] will contact you.

Requesters are not required to identify themselves or to state whether the request is being made on their own behalf or on behalf of an organization or corporate entity. Nor is a requester required to provide any contact information. If a requester declines to give his or her name or any contact information, the employee should provide the telephone number, email address, or some other method for the requester to contact the Designated Custodian for follow-up on the status of the request.

#6 Don't offer any information regarding the materials sought or the manner in which the Agency will respond to the request.

SILENCE

or

I'm not the records custodian and, therefore, can't provide you with any information regarding the [existence or nature or volume or format, etc] of the materials you are seeking.

The manner in which the Agency responds to a public records request varies depending upon what is being requested and the manner in which the requester seeks access. Because there can be so much variation in the appropriate response that must be given, that analysis and decision must be made by the Designated Custodian, sometimes in consultation with legal counsel or others employed by the Agency.

#7 Don't be bullied into submission.

I have noted your public records request in writing and will forward it to the records custodian. Any further communication regarding your request must be directed to [the

Designated Custodian].

Most requesters will be satisfied with the responses suggested above. However, some may either insinuate or even insist that the employee is required to allow the requester to immediately inspect or even photograph the materials being requested. While an Agency may ultimately provide such access, the employee should not make that decision. Nor should the employee get into a debate with the requester or feel compelled to respond to questions after informing the requester that the Designated Custodian will provide the responses. Instead, merely react in a manner consistent with the suggestions above.

The employee should promptly forward his or her notes regarding the request to the Designated Custodian.

QUICK DO'S AND DONT'S

<i>Do</i>	<i>Don't</i>
Acknowledge that a public records request has been made.	Don't make any statement indicating that the request will be granted or denied.
Inform the requester that you are not the records custodian.	Don't state or suggest that you are the records custodian.
Identify the records custodian and provide his/her contact information.	Don't insist that the requester identify him/herself.
Ask for a clear description of the records the requester seeks. Write down the description.	Don't insist that the requester make the request in writing.
Ask how the requester would like to be contacted regarding his/her request.	Don't ask why the requester wants the records.

Transmit your notes regarding the request to the designated records custodian.	Don't offer any information regarding the existence or nature of the records.
Remain calm and polite.	Don't panic. Don't allow yourself to be bullied.

This article has been updated from the original publication, "Tips for Reacting to an "In-Person" Public Records Request Under Florida's Public Records Act," written in 2014 by Carlton Fields Shareholder (retired) Martha Chumbler.

Authored By



Kenneth A. Tinkler

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