



# Open Government Overview

## Sunshine Law and Public Records Law

### Division of Legal Affairs

Florida Agricultural and Mechanical University  
Board of Trustees Retreat  
August 4, 2021



# SUNSHINE LAW

## Authority and Scope



### Legal Authority

- Article I, Section 24, Florida Constitution; Chapter 286 and Section 1001.72, Florida Statutes; Board of Governors Regulation 1.001(2)(i); FAMU Board of Trustees Operating Procedures Article 5.

### Scope

- Applicable to the following:
  - elected and appointed boards or commissions
  - any gathering of two or more members of the same board or advisory committee appointed by a single public official to discuss any matter which will foreseeably come before that board for action
- Information and interpretations concerning Florida's laws can be found at <http://www.myflsunshine.com>.

# Open Meetings

In Brief

## FAMU BOARD OF TRUSTEES ARTICLES

- 5.4 NOTICE OF MEETINGS
- 5.10 MINUTES

START HERE

YES

Meetings of a public board, commission, covered advisory committee, where official acts/public business is conducted?

NO

Meeting must open to the public.

Meeting does not have to be open to the public.

Reasonable notice of such meetings must be given

Minutes of the meetings must be taken, promptly recorded, and open to public inspection.

**Compliance Achieved!**

- The phrase "open to the public" means open to all who choose to attend even if the meeting is held in person, via telephone, zoom, or other means.
  - Board/committees may not exclude some members of the public (i.e. employees, vendors or reporters) from public meetings.
- Board/committees may adopt reasonable rules and policies to ensure orderly conduct of its meetings, but may not ban non-disruptive videotaping, tape recording, or photography at public meetings.
- Meetings must be held in buildings that are open to the public, not private homes.

SUNSHINE LAW CONTINUED

# BOARD/ADVISORY COMMITTEE MEETINGS

- Board/committee members may not use e-mail, the telephone or any other form of communication to conduct a private discussion about the business of the Board/committee.

- Board/committee members may send a "one-way" communication to each other as long as:
  - the communication is kept as a public record.
  - there is no response to the communication except at an open public meeting.
  - The communication does not involve any issues that are part of or can be part of the decision-making process.

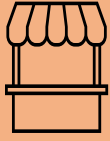


- While a Board/committee member is not prohibited from discussing Board/committee business with staff or any other person not on the Board/committee, these individuals cannot be used as a liaison to communicate information between Board/committee members.
  - For example, a Board/committee member cannot ask staff to poll the other Board/committee members to ascertain their views on a Board/committee member issue.
- Board/committee members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act.

SUNSHINE LAW CONTINUED

- Notice
  - Must be reasonable
  - May be published/posted in print, electronically, or by/in other media
  - Must include date, place, time and general subject matter to be addressed
- Public Comment
- Minutes
  - Promptly recorded
  - Available for public inspection and review
    - Posted to Board's Website within 2 weeks of meeting

SUNSHINE LAW CONTINUED



Vendor negotiation meetings where negotiation strategies occur and where vendors make presentation and answer questions.

### VENDOR NEGOTIATION MEETINGS



... any board or commission of any state agency or authority or any agency or...and the chief administrative or executive officer may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency.

### PENDING LITIGATION



[a]ll discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining.

### COLLECTIVE BARGAINING



Fact-Finding Committees established strictly for information gathering and reporting, no decision-making.

### FACT-FINDING COMMITTEES

# SUNSHINE LAW EXEMPTIONS



# PENALTIES

- Any Board/committee member who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree, punishable by possible criminal penalties of up to 60 days in prison, or up to a \$500 fine, or both. An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.
- Such violations may subject the University to an assessment of attorney's fees.



# PUBLIC RECORDS LAW

## Legal Authority

- Article I, Section 24, Florida Constitution; Chapter 119; Section 1001.72, Florida Statutes; BOG Regulation 1.001(2)(h); BOG Regulation 1.001(2)(h); FAMU Board of Trustees Operating Procedures Article 10.3.
- By law, the public has the right to review, inspect, and/or copy public records made or received in connection with official business of any public officer or employee or persons acting on their behalf.



Section 119.011 (12), Florida Statutes, defines "*public records*" to include:

- all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material,
- regardless of the physical form, characteristics, or means of transmission,
- made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
  - Public Records: employment records-applications, resumes; policies; handbooks; emails about official business; contracts; meeting minutes; interoffice memos, post-it notes.
  - Non-public records: Personal Records and notes to help aid memory and that are not shared; transitory messages/documents such as telephone messages.

# PUBLIC RECORDS CONTINUED

- The Florida Supreme Court interprets this definition to encompass all materials made or received by any member of the Board/committee/public employee in connection with official business which are *used to perpetuate, communicate or formalize knowledge*.
- The public record determination is based on the content of the records and not the format of the record.
- There is no "*unfinished business*" exception to the public inspection and copying requirements of the Public Records Act.
  - If the purpose of a document prepared in connection with the official business of the University is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of the University.



# PUBLIC RECORDS LAW

- Any Board/committee/public employee record, if circulated for review, comment or information, is a **public record** regardless of whether it is an official expression of policy or marked “preliminary” or “working draft” or similar label.
- Examples of such materials include:
  - interoffice memoranda
  - preliminary drafts of regulations or proposals which have been submitted for review to anyone within or outside the University.
  - working drafts of reports which have been furnished to a supervisor for review or approval.



# PUBLIC RECORDS LAW

## Disclosure of Public Records:



- **Records custodian must allow review or copying of public records; however, statutorily prescribed fees may be charged for copies.**
  - **invoice estimated costs and request prepayment prior to providing records allowed**
- **Requests for public records may be made orally or in writing, and the requestor is not required to self-identify or provide a reason for the request.**
  - **University is not required to create, alter, or reformat records to fulfill requests**
- **Records must be released within a reasonable time and under reasonable circumstances.**
- **Public Records Requests are processed by the by the Public Records Section of the General Counsel's Office. [publicrecords@famu.edu](mailto:publicrecords@famu.edu)**

# PUBLIC RECORDS LAW: EXEMPTIONS

Social Security and Taxpayer Records

Bank Account and Specified Financial Information

Student Records

Medical Records

Faculty Academic Evaluations

Specified Direct Support Organization Records

Specified Research Records

- Although there are exemptions to the Public Records laws, such exemptions are to be narrowly construed.
- The Office of the General Counsel will make exemptions determinations and redaction of confidential information.

# PUBLIC RECORDS LAW: PENALTIES

## Penalties

- A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Chapter 119.
- In addition to judicial remedies, section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.
- The University is also subject to attorney's fees and costs.





# Fiduciary Duties and Principle Division of Audit

Florida Agricultural and Mechanical University  
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**FAMU**

FLORIDA  
AGRICULTURAL AND  
MECHANICAL  
UNIVERSITY



# Fiduciary Duties and Principle

## Duties:

- Care
- Loyalty
- Obedience

## Principles:

- Independent Decisions
- Sustained Value
- Protecting Institutional Assets
- Meet Societal Obligations

# BOG Regulations

## November 2016 BOG Regulations

- 4.001 – University System Processes for Complaints of Waste, Fraud, or Financial Mismanagement
- 4.002 – State University System Chief Audit Executives
- 3.003 – Fraud Prevention and Detection

# BOG Inspector General



State University System of Florida Board of Governors  
Office of Inspector General and Director of Compliance

**NOTIFICATION PROTOCOL**  
FOR STATE UNIVERSITY SYSTEM OF FLORIDA CHIEF AUDIT EXECUTIVES

#### PURPOSE:

To establish guidelines for State University System of Florida (SUS) chief audit executives (CAE) when notifying the Board of Governors' Office of Inspector General and Director of Compliance (OIGC) of information in accordance with Board of Governors Regulations 4.001 and 4.002.

#### BACKGROUND:

In November 2016, a set of regulations were adopted which promote activities to enhance accountability, integrity, and efficiency. Board of Governors Regulation 4.001 requires SUS CAEs to keep the OIGC informed concerning certain matters related to waste, fraud, or financial mismanagement within their respective universities. Specifically, CAEs must timely provide the OIGC with sufficient information to demonstrate the university board of trustees is both willing and able to address significant and credible allegation(s) of waste, fraud, or financial mismanagement. Additionally, the regulation requires that the OIGC be timely notified of any significant and credible allegation(s) of fraud, waste, mismanagement, misconduct, and other abuses against a university board of trustees member or president. Board of Governors Regulation 4.002 requires CAEs to provide copies of all final investigative reports to the Board of Governors if the allegations are determined to be significant and credible.

#### CONSIDERATIONS FOR NOTIFYING THE OIGC FOR PURPOSES OF THIS PROTOCOL:

CAEs should be aware of sensitive issues involving their university and its employees and their regulatory responsibilities to notify the OIGC. The following list provides *general* conditions CAEs should consider when determining if a notification to the OIGC is warranted:

- Has there been or could there be unfavorable media attention regarding the issue that poses a significant reputational risk to the university or state university system?
- Is there a possibility of or has there been an arrest of university employees or contractors due to an inquiry, review, or investigation either conducted by the CAE's office or resulting from a referral from the CAE's office in connection with waste, fraud, or financial mismanagement?
- Occurrences of fraud, abuse, or deficiency which could substantially impact university programs or operations.
- Significant complaints of misconduct or personnel matters involving a board of trustees member or university senior management or leadership.

#### HOW TO NOTIFY THE OIGC:

Upon becoming aware of an issue that requires notification to the OIGC, the CAE will timely email the OIGC as follows:

- The email will be sent by the CAE or a delegated senior staff member of the CAE's office;
- The email will be sent to [BOGInspectorGeneral@fbog.edu](mailto:BOGInspectorGeneral@fbog.edu);
  - If the notification relates to an emergency or requires immediate escalation to the Chancellor or Board of Governors, the CAE may call the IG or designee. However, the phone call should be followed up by an email in accordance with this protocol;
- The Subject Line will contain "OIGC Notification from [University Acronym];"
- The OIGC Notification Form (see enclosed) will be attached to the email as a searchable PDF

## Considerations for Notification to OIGC:

- Media Attention – Reputational Risk
- Arrest - Employee/Contractor
- Fraud, Abuse, or Deficiency
- Significant Complaints - BOT Members or Senior Leadership/Management

# Common Pitfalls

- Having or allowing conflicts of interest
- Public Meetings - Having ex parte discussions outside the boardroom
- Micromanaging - “Noses In, Fingers Out”
- Inconsistent Reporting
- Avoiding hard questions and giving in to groupthink
- Gifts
- Disclosures



# FLORIDA A&M UNIVERSITY

Founded in 1887 as the State Normal College for Colored Students, Florida Agricultural and Mechanical University (FAMU) is the only historically state supported educational facility for African Americans in Florida. It has always been co-educational. In 1890, the second Morrill Act was passed. This enabled the school to become the Black Land Grant College for the State of Florida. In 1891, the college was moved from its original location west of town to its present location which was once the site of "Highwood," Territorial Governor W.P. Duval's slave plantation. The school was known as Florida A&M College from 1909 until 1953 when it attained university status.