

**DEPARTMENT OF ECONOMIC OPPORTUNITY
OVERVIEW OF FLORIDA’S GOVERNMENT IN THE SUNSHINE AND PUBLIC RECORDS LAWS**

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Executive Summary:

As soon as you were appointed to the East Central Florida Corridor Task Force (the Task Force), you immediately became subject to Florida’s Government in the Sunshine Law (Chapter 286, Florida Statutes), even before the Task Force’s first meeting.

Violations of the Sunshine Law can result in removal from office, and criminal penalties as severe as 2nd degree misdemeanor charges (up to 60 days in jail and up to \$500 fine).

This outline presents an overview of the requirements of the Sunshine Law and the Florida Public Records Act as they relate to your position on the Task Force.

Basic Sunshine Law Requirements

- 1.** Meetings of public boards or commissions must be open to the public;
- 2.** Reasonable notice of these meetings must be given to the public; and
- 3.** Minutes of the meetings must be taken, promptly recorded, and open to public inspection.

Because the Sunshine Law defines ‘meeting’ broadly to include informal meetings and electronic communications regarding agenda items, outside of a formal Task Force meeting **you must not talk to, text, email, or otherwise communicate with any other member of the Task Force, personally or through any third party, about action that the Task Force may take or matters which will foreseeably come before it for action.**

Failure to comply with the Sunshine Law can **VOID** non-compliant actions of the Task Force.

Florida Government in the Sunshine Law:

The Law: Florida’s Sunshine Law is found in Article I, Section 24 of the Florida Constitution, and Chapter 286, Florida Statutes.

Applicability: The law applies to ANY meeting of 2 or more members or members-elect of the Task Force who meet to discuss a matter which will foreseeably come before the Task Force for action. The law does not generally apply to purely fact-finding committees or to informal meetings of staff. The law does apply if a Task Force has delegated its decision-making authority to another group.

Example: A citizen planning committee appointed by a city council to assist in the revision of zoning ordinances was found to be subject to the Sunshine Law. The court concluded that the committee served as the alter ego of the council in making tentative decisions. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

Example: Limits to the Fact-Finding Role: A district school board, as the ultimate decision making body, violated the Sunshine Law when the board, together with school officials and

members of the media, took a bus tour of neighborhoods affected by the board's proposed rezoning even though board members were separated from each other on the bus, did not express any opinions or their preference for any of the rezoning plans, and did not vote during the trip. *See Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008) (The ultimate decision-making body cannot evade the Sunshine Law by taking only fact-finding actions at a particular 'meeting.')

Meetings: The law defines a meeting as any gathering, whether formal or casual, of two or more members of the same Task Force to discuss some matter on which foreseeable action will be taken by the Task Force. One-way electronic or written communications between Task Force members are not considered a meeting, unless they result in comments or responses by other members. For example, circulating reports amongst members is permissible, so long as those reports do not solicit comments from the other members. However, if even just one member responds to such an email or communication, a violation of the Sunshine Law occurs. Therefore Task Force members should not email or otherwise circulate materials to each other.

Example: City commissioner may post comment regarding city business on blog or message board; however, subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law. AGO 08-07.

Example: Members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action. AGO 09-19

Additionally, a third-party liaison, or other means, cannot be used to evade the law to exchange information between Task Force members. If a Task Force member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should either leave the meeting or ensure that the meeting complies with the Sunshine Law.

Example: City manager is not a member of the city council and thus may meet with individual council members; however, the manager may not act as a liaison for board members by circulating information and thoughts of individual council members. AGO 74-47

Social Meetings: Members of the Task Force may meet together socially, so long as they do not discuss any matter which will foreseeably come before the Task Force for action

Example: A luncheon meeting held by a private organization for members of a public board or commission at which there is no discussion among such officials on matters relating to public business would not be subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. AGO 72-158

Accessibility: Meetings of the Task Force must be open to the public, accessible to individuals with physical handicaps, and held at locations that are easy to reach and do not discriminate on the basis of sex, age, race, creed, color, origin, or economic status, or otherwise unreasonably restrict public access. Minutes of the meetings must be taken, promptly recorded, and open to public inspection.

Criminal and Civil Penalties: Knowing violations of the Sunshine Law can result in 2nd degree misdemeanor charges, with penalties up to 60 days in jail and up to a \$500 fine. Violations of the Sunshine Law that are not "knowing" violations are non-criminal and are punishable by a fine of up to \$500. The public may bring an action to enforce the Sunshine Law. Circuit courts may issue injunctions to enforce the law. Additionally, failure to comply with the Sunshine Law can **VOID** non-compliant actions of the Task Force.

Public Records Act:

Basics: In addition to the Sunshine Law, the Task Force is subject to the Florida Public Records Act (Chapter 119, Florida Statutes). This law requires that all documents and other materials **made or received** pursuant to Task Force business, must be retained and made open for public inspection unless specifically exempted from disclosure by statute.

Definition of Public Records: The Florida Supreme Court has interpreted the term “public records” to mean “all materials made or received in connection with official business **used to perpetuate, communicate, or formalize knowledge.**” Public records include more than just written documents. For the purposes of the Task Force, all documents, emails, sound recordings, PowerPoint presentations, and other records pertaining to Task Force business are public records.

Records Requests: Any citizen of Florida may make a public records request to the Task Force to view or obtain copies of public records. In order to ensure that we can respond to public records requests in a timely manner, all records generated by the Task Force must be retained and available to produce to records requestors.

Personal Emails and Text Messaging: If the content of an email pertains to Task Force business, that email is a public record, **even if the email is sent from your personal computer or smartphone.** Likewise, text messages discussing Task Force business are public records, regardless of whether the texts were sent from a state phone or your personal phone.

Legal Penalties: The Public Records Act contains **criminal penalties** for knowing violations of the Act: removal from office and a 1st degree misdemeanor punishable by up to one year in prison and/or a \$1000 fine. The Act also includes non-criminal sanctions of up to a \$500 fine for unknowing or non-willful violations.