



MEMORANDUM

TO: Florida Polytechnic University Board of Trustees

FROM: Vikki Shirley, General Counsel

DATE: July 27, 2012

RE: Public Records and Open Meetings Requirements

As a newly appointed member to a constitutionally created board, it is important to understand Florida's public records and open meetings requirements, commonly referred to as the Government in the Sunshine Law or just the "Sunshine Law". This memorandum provides a very broad overview of the public records and open meeting requirements that we will discuss during the orientation. Once counsel has been retained for the university, a more in-depth review is recommended, along with training on Florida's Code of Ethics for public officers.

Public Records

Article I, section 24 of the Florida Constitution provides all persons with the right to inspect or copy any public record that is made or received in connection with the official business of any public body. The statutory definition of "public records" is very broad and includes, among other things, all documents, papers, letters, emails, memoranda, and other materials, regardless of the physical form or means of transmission, which are made or received in connection with the transaction of official business by any governmental entity.

Accordingly, any letters, memos, emails or other documents you may send or receive relating to official board of trustees' business constitute public records and, as such, are subject to disclosure to the public. This broad requirement applies equally to documents stored on your business or personal computers, so long as the documents relate to the official transaction of board business and are used to perpetuate, communicate or formalize knowledge. It also applies to preliminary drafts or work papers so long as those drafts or work papers have been circulated for review, comment or information.

There are, however, statutory exemptions to the public records law that preclude disclosure of certain categories of documents or information to the public. For example, an exemption attaches to personally identifiable education records of students; proprietary information related to sponsored research; records of university direct support organizations; social security numbers of university students and employees; and certain personnel records designated as “limited access”.

The university will need to designate a position or office responsible for acknowledging and responding to public records requests received by the university.

Open Meetings

Article I, section 24 of the Florida Constitution requires that all meetings of a public board be open and noticed to the public. This requirement has been interpreted by the Florida Supreme Court to mean that any discussions or deliberations, whether formal or casual, between two or more members of the same board on any matter on which the board might foreseeably take action must occur in the context of a meeting that has been noticed and is open to the public.

The purpose of this requirement is to prohibit “closed door” decision-making and to ensure public access to the decision-making process of public boards. The Open Meetings requirement does not, however, preclude board members from engaging in discussions of a social nature so long as those discussions do not encompass matters that may come before the board for decision.

“Meeting” has been broadly interpreted to include not just face-to-face communications, but also written, telephonic, and electronic communications between board members relating to board business, and “decision-making” includes every step of the process involved in arriving at a board decision, and not merely the meeting where the final vote is taken.

The Open Meetings law, codified in chapter 286, Florida Statutes, has been broadly construed by the Florida Attorney General’s office, which routinely issues opinions dealing with the applicability and interpretation of Florida’s Government in the Sunshine Laws. For example, even issues that are more procedural in nature than substantive, such as two board members selecting a third member to serve on a complaint review board, have been viewed by the Attorney General’s office as constituting a meeting subject to the requirements of the Open Meetings law. Similarly, in a 1981 Attorney General opinion, members of a city council were “strongly advised” against meeting with the mayor to discuss purely administrative functions

that would not come before the council for action due to the potential for inviting “public suspicion” since no member of the public would be present.

The procedural requirements for a Sunshine meeting are straightforward: the public must be given reasonable notice of the meeting, all meetings must be held in a location that is accessible by the public, and minutes of the meeting must be taken. While “reasonable notice” has been held by one court to be as few as three days’ notice, university boards publish their meeting dates on the university websites for the current year and some have meeting dates published for 2013.

In addition, most university boards publish the agenda for each meeting approximately ten to fourteen days in advance of the meeting on its website. All meetings must be held in locations that are accessible by the public, and the Corporate Secretary takes and maintains minutes of the board meetings, which must be approved by the board at its next regularly scheduled meeting.

There are both civil and criminal penalties that attach to a violation of the Open Meetings law. Section 286.011, Florida Statutes, provides that any member of a public board who “knowingly violates” the Open Meetings law by attending a meeting that is not held in accordance with the law or by engaging in conduct outside of the state that constitutes a “knowing violation” is guilty of a second degree misdemeanor (punishable by a term of imprisonment not exceeding 60 days or a fine of \$500). Section 286.011 also provides for a civil fine not to exceed \$500 for a public officer’s violation of any provision of section 286.011. Finally, a member who is convicted of a knowing violation of the Open Meetings law may be removed from office by the Governor. Consequently, it is important for all board members to be fully apprised of the Open Meetings law and to observe its requirements at all times.

After you have had an opportunity to review the foregoing, I would be happy to answer any questions you may have. You can reach me at vikki.shirley@flbog.edu or 850-245-0430.

VRS/km