



John A. Carey  
Inspector General

# OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

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## Avoid Records Retention Pitfalls

Records retention is a vital function within government. Chapter 119, Florida Statutes, requires that any records made or received by any public agency<sup>1</sup> in the course of its official business that are used to perpetuate, communicate or formalize knowledge be made available for inspection and copying, unless specifically exempted by the Florida legislature. The State of Florida General Records Schedule for State and Local Government Agencies (GS1-SL) provides retention periods for most common governmental records<sup>2</sup> made or received by state and local governmental entities. A public record may be destroyed or disposed of only in accordance with the pertinent retention schedule. Whether it is a government program, grant agreement, interlocal agreement between governmental agencies, or contract awarded as a result of a procurement, records associated with government operations require proper maintenance, retention, and disposition to comply with state law, and in some instances applicable ordinances, contractual terms, policies, and/or procedures.



### Record Retention Pitfalls

1. Documents cannot be produced when and as required by law.
2. Failure to identify agency custodian of records and/or records management responsibility not assigned.
3. Failure to train agency employees on the legal requirements and/or internal processes relating to public record maintenance, retention, and disposition; disclosure and exemptions; and proper disposition.
4. Incomplete, unorganized, or unlabeled records.
5. Paper documents are the primary source of records.

<sup>1</sup> Section 119.011(2), Florida Statutes, defines "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law ..... and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>2</sup> The GS1-SL Schedule sets retention requirements for records documenting administrative and program functions common to government agencies including, but not limited to personnel, accounting, and general administration records.

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## Record Retention Tips

1. Comply with the GS1-SL Schedule.
2. Store records electronically using a filing system and file names that assist in locating records.
3. Assign responsibility for records management to appropriate and trained personnel.
4. Never destroy documents or information in response to a request for information or after being summoned by court order, unless disposition is permitted by law. Legal ramifications can be costly and may result in fines, penalties and/or imprisonment.<sup>3</sup>
5. Establish policies and procedures that address how staff maintain and schedule disposal of public records.

## Procurement Record Retention requirements: Non-Capital and Capital Projects

Doing business “in the Sunshine” is a basic tenet in public procurement within Florida. The primary purpose of public procurement is to obtain quality goods and services to support effective and efficient government, thereby ensuring prudent use of government funds. As demand for contracts increase and purchasing requirements become more complex, the need to understand and administer established record retention requirements is essential to transparency in government operations.

## Other Sources of Record Retention Requirements



Public entities are bound by Florida laws, but in some instances contractual provisions and/or Federal laws may be applicable. **Do not assume Florida and Federal record retention requirements are the same.** When Federal funds are used for a project, the retention and disposal of documents should be adhered to in accordance with any applicable Federal regulations to avoid penalties. In the event a contract sets forth retention requirements that are longer than the minimum requirements in state or federal law, the contractual requirements should be followed. Such requirements are often set forth in the grant agreements or contracts. Agreements sometimes extend the retention or disposal period to allow for audits or legal process.

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<sup>3</sup> Insights, The importance of establishing a record retention policy for your organization. Blum Shapiro, September 25, 2014. <https://www.blumshapiro.com/insights/the-importance-of-establishing-a-record-retention-policy-for-your-organization/>

## **Records Retention Violations our office found in entities within Palm Beach County**

- In the review of an external audit services procurement, we found that an entity was not able to provide selection committee member score sheets that would allow the public to review how each selection committee member scored proposals.
- In the audit of an entity's cross connection program, the performance of the program was outsourced. The entity did not obtain or retain any records from the contractor related to the performance of the program and relied on the contractor to retain the records. We found the contractor did not retain all of the records.
- In an entity program audit, we found the entity did not retain records as specified in the interlocal agreement.
- In an audit of the public service tax, we found certain vendors did not retain sales records as required by Florida statute and local ordinance.
- In response to a citizen complaint, we found that an entity being investigated did not comply with records retention requirements related to procurement documentation.

## **Suggestions**

We recommend that local government entities review their policies and take appropriate actions to comply with state and Federal public record retention laws and consult their records custodian and/or legal counsel when questions arise.