

Guidance on Public Records Laws

CS/HB 1679 Public Records Study Committee

Chapter 2002-302, Laws of Florida



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INTRODUCTION

CS/HB 1679 creates a 22-member study committee on public records and privacy laws. The specific focus of the committee is to review access to records in the custody of the Clerk/Comptroller and any associated privacy issues. The final report is due January 1, 2003. Additionally, the bill creates a list of what an Official Records' Index may contain and specifies which document images may not be displayed on a "publicly available Internet website" after the bill becomes law.

In April 2002, Education Chair, Barbara T. Scott, named a group of Clerk/Comptroller staff to a workgroup to review this bill in more detail and provide guidance for the practical application and implementation of this bill by Florida's Clerks and Comptroller Offices.

The workgroup was comprised of the following members:

- Randy Long, Charlotte County, chair
- Don Allgood, Okaloosa County
- Becky Bradley, Polk County
- Debbie Bruce, Orange County Comptroller
- Elaine Coats, Nassau County
- Pat Hargraves, Hernando County
- Helene Marks, Hillsborough County
- Bernice Norton, Dade County
- Karl Youngs, Manatee County
- Fred W, Baggett, FACC General Counsel
- Beth Allman, FACC staff

The Work Group on Public Records reviewed all of the questions submitted by the Clerks/Comptrollers statewide and developed a document entitled Guidance on Public Records Laws to address the vast majority of questions submitted. In an effort to respond to major concerns and certain points of clarification, a list of frequently addressed questions/concerns ("**FAQ's**") appears below with the corresponding answers. However if after reviewing the Guidance Document you have additional unanswered questions, please contact Beth Allman at the FACC office for further clarification from the Work Group.

The following guidance document represents the work product of this group.

GENERAL POINTS OF CLARIFICATION RE: CS/HB 1679:

(1) **CS/HB 1679** only addresses the *images* of the Public Record, including the Official Record, which appear on a “publicly available Internet website.”

(2) **CS/HB 1679** limits the types of images which may be placed on a “publicly available Internet website.” (See Guidance Document for details.) Specifically: (a) military discharge; (b) death certificate; (c) court file record or paper relating to matters or cases governed by Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

(3) **CS/HB 1679** allows for removal of the above referenced document images from a “publicly available Internet website” by written request.

(4) **CS/HB 1679 DOES NOT ADDRESS REDACTION.**

(5) **CS/HB 1679** has no effect on the Official Record maintained in a Clerk’s/County Recorder’s office. (See Guidance Document for further details.)

FREQUENTLY ASKED QUESTIONS

(1) *How is a Clerk/County Recorder to include items now contained in the "Index" other than those specifically stated in Section 28.2221?*

Section 28.2221(2) provides:

The index shall be limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.

This section does not define "comments"; therefore, unless the statute or law specifically prohibits an item from being included in a Clerk's/County Recorder's Index, it can arguably be considered part of the "comments."

(2) *Does the Clerk/County Recorder have to remove documents from microfilm, etc.?*

All forms of the Official Record maintained within the Clerk's/County Recorder's office or at an office's remote location are not considered "otherwise made electronically available to the general public." (See **SB 24-E** and related Guidance Document.) This also excludes any type of subscription service from **CS/HB 1679**.

(3) *Should a death certificate be recorded if it is attached to another document?*

There is no prohibition on recording a document. The prohibition is limited to the placing of images on a "publicly available Internet website." The prohibition after the effective date of the law is on placing the **image** of a death certificate (any death certificate) on a "publicly available Internet website." There is no requirement for the Clerk/County Recorder to read and review the body of a document prior to recording. However, since in recording most documents are reviewed for attachments, notary stamps, and other indicia of recordability, it would be wise to identify any document containing one of the prohibited document types so the recorded document, including its attachments, would not be placed on a "publicly available Internet website" (*i.e.*, formulate new document type codes).

(4) *Should the Clerk/County Recorder, redact social security numbers from IRS liens or other similar documents maintained on the Official Record?*

No. **CS/HB 1679** does not authorize redacting/removing social security numbers. It is limited to the removal of certain document images placed on a "publicly available Internet website." An IRS lien is not one of the documents authorized for removal. **CS/HB 1673** does authorize redaction/removal of a social security number from an image of a document contained on a "publicly available Internet website," but only after a written request has been made. Until January 1, 2006, there is no authority to remove a social security number from the Official Record maintained in the office of the County Recorder. (See Guidance Document on **CS/HB 1673**.)

- (5) CS/HB 1679 Section (5)(b) references an “effective date” and states that any records specified in this subsection which have been made available on a “publicly available Internet website” prior to such effective date, must be removed upon written request. What does the effective date refer to?**

This subsection assumes that if a Clerk/County Recorder has not placed images on a “publicly available Internet website” before the effective date of this law, then all images placed on a “publicly available Internet website” will comply with **CS/HB 1679**. However, any Clerk/County Recorder who has already placed images of the Official Record on a “publicly available Internet website,” which images include those prohibited under **CS/HB 1679**, does not have to go back and remove all prohibited images, but only has to remove those prohibited images when a valid legible written request has been made. The bill is effective on becoming law.

- (6) Can written requests be e-mailed?**

Yes. 28.2221(5)(b) provides that:

Such request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court.

It does not require signature, but specifies the request should be by an “affected party.” (See Guidance Document for definition of “affected party.”) Therefore, the Clerks/County Recorders need not respond to anonymous requests.

- (7) How does CS/HB 1679 effect the recording and transmitting of death certificates to the Property Appraiser’s offices?**

It has no effect. The death certificate is still recordable. The image should not be placed on a “publicly available Internet website” after the effective date of this law. It would become unavailable on a “publicly available Internet website” after the effective date if its image had already been placed on a “publicly available Internet website”; but only after a valid written request had been submitted.

- (8) Should the Clerks/County Recorders maintain copies of requests for removal of images from the Internet? If yes, how long?**

It is a good idea to maintain a record of the requests for removal of images from the “publicly available Internet website.” The request should probably be retained the same period of time as the document image which has been requested to be removed. Since under **CS/HB 1679** only the “publicly available Internet website” image is being removed, no permanent change in the Official Record is effected.

DEFINITIONS

“Affected party” means any party whose name is included in a document.

“Court file, record, or paper relating to matters or cases” generally means papers that include the style of a case and/or a related case number, such as a pleading.

“Publicly available Internet website” means any electronic mode of record publication external to the Clerk/County Recorder’s office, such as an Internet website available to the public at large at no charge. By way of example, but not limitation, this definition does not include Intranet sites, in-office Internet sites, microfilm, in-office viewing of any type, or subscription services.

SUMMARY

This bill creates a Public Records Study Committee with 22 members who must be appointed within 30 days of the bill becoming law. The committee is charged with addressing issues of privacy and public access in relation to the collection and dissemination of information contained in court records. The committee terminates on June 30, 2003.

Upon becoming law on June 5, 2002, CS/HB 1679 creates a limitation on the images or copies of public records, including the Official Records, which may be placed on a publicly available Internet website. The excluded document images are as follows:

- Military discharges;
- Death certificates; or
- A court file, record or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Images of these types of documents that are already on the publicly available website at the time the bill went into law may remain until a removal request is filed.

If a request is made to remove an image from the external Internet site:

- The **index** to the Official Records is still available, both on a publicly available Internet website and in the office of the Clerk/County Recorder; and,
- The documents themselves are still available, both in your office and in all other forms maintained by the office.

This removal request must be in writing and identify the image to be removed by providing the "identification" page number of the document. It is not required to be signed or verified.

The bill also amends s. 28.2221, Florida Statutes, to require that the index of the Official Record placed on a publicly available Internet website be limited to the following fields:

- grantor and grantee names
- party names
- date
- book and page number
- comments
- type of record

This does not preclude one from using instrument numbers or other unspecified items. The "comments" section is a section available for case numbers, legal descriptions, instrument numbers, or any other general information not contained in the list of categories above, as long as disclosure of such information does not violate any other provision of law.

GENERAL SCHEDULE FOR NOTICE PROVISIONS

No later than 30 days after the effective date of **CS/HB 1679**:

- A notice must be displayed on the “publicly available Internet website” which displays *images or copies of the Official Record of the County Recorder*;
- A notice must be posted in the office of the County Recorder; and
- A notice must *have been* published twice on two separate dates, in a newspaper of general circulation provided for in Chapter 50, Florida Statutes, in the county where the County Recorder’s office is located.

If a County Recorder has not placed images of documents on a “publicly available Internet website,” then there is no notice requirement.

INDEX TO OFFICIAL RECORDS

The bill amends section 28.2221, Florida Statutes, to require that the Index of the Official Record placed on “a publicly available Internet website” be limited to the following fields:

- grantor and grantee names
- party names
- date
- book and page number
- comments
- type of record

This does not preclude one from using instrument numbers or other unspecified items. The “comments” section is a section available for case numbers, legal descriptions, instrument numbers, or any other general information not contained in the list of categories above, as long as disclosure of such information does not violate any other provision of law.

PROHIBITION OF IMAGES ON THE INTERNET

The bill provides that upon becoming law, no *image or copy* of the below listed types of records may be placed on a “publicly available Internet website” for general public display (see Definitions Section). This pertains to public records, including court files and the Official Record. **This prohibition does not exclude the disclosure of images of records on subscription services, contract services, or some sort of secure and/or limited Internet access.**

- Military Discharges
- Death certificates
- Court files, records, or papers relating to matters or cases governed by the:
 - Florida Rules of Family Law,
 - Florida Rules of Juvenile Procedure, or
 - Florida Probate Rules.

The bill ONLY prohibits disclosure of the *IMAGES* of these documents on a “publicly available Internet website.” The Index to the Official Record is still available fully in the form described above, both on a “publicly available Internet website” and in the office of the Clerk/County Recorder. The documents themselves are still available both in your office and in all other forms which you maintain, other than on a “publicly available Internet website.”

Please be aware that certain documents recorded by the Clerk/County Recorder may include one of the above-listed documents as an attachment. If any of the above identified documents is attached to a document presented for recording, it is suggested that such documents are identified as those that are not to be available on a “publicly available Internet website.” This may require the development of new document codes to more readily identify those images subject to removal and/or prohibition from inclusion on a “publicly available Internet website.”

CASE TYPES

The following is a list of the types of cases which may contain documents excluded under the provision of **CS/ HB 1679** from disclosure on a "publicly available Internet website." While this is not an all-inclusive list, it serves as a good solid basis for deciding which images may or may not be displayed on a "publicly available Internet website."

Florida Probate Rules - CASE TYPE

Baker Act	Caveats
Conservatorship	Disposition of Personal Property w/o Administration
Emergency Admission-Substance Abuse	Foreign Guardian
Foreign Guardianship	Foreign Probate
Formal Administration	Guardianship - Minor
Guardianship - Person	Guardianship - Person & Property
Guardianship - Property	Guardianship/ Miscellaneous
Incapacity	Notice of Trust
Petition for Minor Settlement	Pre-need Guardianship - Adult
Pre-need Guardianship - Minor	Probate Trust
Safe Deposit Box	Substance Abuse
Summary Administration	Wills Filed for Deposit

Florida Family Law Rules of Procedure - CASE TYPE

Adoption
 All modifications, enforcement and Civil contempt of these actions.
 Annulment
 Child Support
 Custodial care or access to children (except as otherwise provided by Rules of Juvenile Procedure)
 Declaratory judgment actions relating to pre-marital, marital and post-marital agreements
 (except when otherwise provided, when applicable, by the Florida Probate Rules)
 Delayed Birth Certificate
 Dissolution of marriage
 Injunctions for Domestic and Repeat Violence
 Name change
 Paternity
 Petitions to domesticate a foreign judgment (if the foreign judgment is family law case)
 Petitions to register a foreign support order under Chapter 88
 Proceedings for emancipation of a minor
 Simplified dissolution
 Support
 Support unconnected with dissolution of marriage
 URESA/UIFSA cases

Juvenile - CASE TYPES: ALL

Adoption	Delinquency	Dependency
Shelters	Terminations	Truancy

REMOVAL REQUEST

Any of the types of records whose *images* are identified in CS/HB 1679 as prohibited from disclosure on a “publicly available Internet website” must be removed if the “affected party” (see Definition Section) so requests. This removal request must be in writing and identify the image to be removed by providing the “identification” page number of the document. **While CS/HB 1679 limits the images that may be placed on a “publicly available Internet website” after the effective date of this law, it also provides that any of the enumerated document images that had been put on the site prior to the effective date must be removed from a “publicly available Internet website” if an “affected party” requests removal in the manner stated above.**

Note: An “affected party” can make the removal request in any desired format, and such request must be honored as long as it contains the document information number and identification page number of the document sought to be removed. Also these requests are not required to be verified or signed. HOWEVER, IT IS STRONGLY RECOMMENDED THAT A REQUEST FORM SUBSTANTIALLY SIMILAR TO THE ONE IN THIS GUIDANCE BE MADE AVAILABLE IN YOUR OFFICES FOR AN “AFFECTED PARTY” TO UTILIZE FOR SUCH A REQUEST. WHILE AN “AFFECTED PARTY” MAY NOT BE COMPELLED TO USE THIS FORM, REFUSAL TO COMPLY IS UNLIKELY IF THE REQUESTER IS PRESENTED WITH SUCH FORM.

The request must be delivered by mail, by facsimile, electronic transmission, or in person to the County Recorder or Clerk/Comptroller.

The image must be removed at no charge.

It may be beneficial to scan the forms for removal requests into a secure site or file for retention purposes.

COMPLIANCE

Any "affected party" may petition the circuit court for an order directing compliance with a request to remove an image or images from a "publicly available Internet website" after the effective date of the bill.

NOTICE REQUIREMENTS

No later than 30 days after the effective date of this act, notice must be conspicuously and clearly displayed by the County Recorder/Clerk/Comptroller in the office and on a "publicly available Internet website" informing the public of the right of "affected persons" to request removal of certain images from such "publicly available Internet website."

No later than 30 days after the effective date of this act, the County Recorder/ Clerk/Comptroller must have published the notice on two separate dates in a newspaper of general circulation in the county where the County Recorder's office is located as provided for in Ch. 50, F.S.

IT IS STRONGLY RECOMMENDED THAT ALL COUNTIES PUBLISH THE REQUIRED NOTICES BETWEEN JUNE 1ST AND JUNE 15TH IN AN APPROPRIATE PUBLICATION WITHIN THEIR COUNTY.

If a County Recorder has not placed images of documents on a "publicly available Internet website," then there is no notice requirement.

The following pages provide a generic notice for publication in the newspapers and posting in the office and a removal request form.

Office/Internet/Newspaper Notice**EFFECTIVE IMMEDIATELY**

Prior to the implementation of a Florida Law which requires that images of County Official Records be published on the Internet by 2006, the Clerk (or Comptroller) was instrumental in assisting the Legislature in developing measures to protect the most sensitive types of information belonging to the public.

Upon becoming law, CS/HB 1679 provides that images of the following types of documents may not be placed on a "publicly available Internet website" :

Military Discharge

Death Certificates

Court files, records of paper relating to matters or cases governed by

The Florida Rules of Family Law

The Florida Rules of Juvenile Procedure

The Florida Rules of Probate

Document types identified above which have been recorded in the county Official Records prior to the effective date of CS/HB 1679 will continue to be displayed on the Internet website unless a written request for removal has been presented to the Clerk.

Any "affected person" may request that the Clerk of Court/Comptroller or County Recorder remove an image of one of the above-listed documents from a "publicly available Internet website." This request must be in writing and may be delivered in person, by mail, electronically, or by facsimile. The request must specify the "identification" page number of the document to be removed. Forms are available in our office, upon request, to assist you.

No fee is charged for this service.

Florida law requires that images and copies of the above listed documents remain on file and available to the public upon request in the office of the Clerk/County Recorder.

(Insert Clerk's Office contact information)

REQUEST FORM FOR INTERNET IMAGE REMOVAL

Date: _____

Requestor's Name: _____

Phone Number: (optional) _____

For Blocking Official Record Images

Instrument Number/Book and Page Number/Document Type

For Blocking Court Record Images

Case Number/Document Name/ Page Number

For Office Use Only:

Date Request Received _____

Date Request Completed _____

Clerk Processing Request _____