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Florida's Public Records Law: Its Role in a Tragedy During Hurricane Irma

Patrick Sheehan
psheehan21483@gmail.com

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Patrick Sheehan

The University of Nebraska-Lincoln

College of Journalism and Mass Communication

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Table of Contents

I. The Phone Calls to Governor Scott's Personal Phone

1) The Facts: On September 10, 2017, Hurricane Irma made landfall in Florida, and wreaked havoc across the state causing structural damage, flooding, and power outages. Among those effected by the power outage was the Hollywood Hills Rehabilitation Center, a nursing home in Hollywood, Florida. In preparation of the impending storm, the governor of Florida, Rick Scott, held "teleconference calls (Spencer, Kennedy, Licon, & Associated Press, 2018) ," with nursing home and hospital officials, as well as emergency managers. During these conference calls, Scott gave top nursing home executives his personal cell phone number and told these executives should they experience any issues, they should call him, and he would work to resolve their problem (Defede, 2017).

2) Media Review and Timeline: The Sun Sentinel (Sentinel Staff, 2018), provided a timeline of the events and how they unfolded, according to the nursing home and the governor's office. The timeline is summarized below:

A) Sunday, September 10, 2017: The Hollywood Hills Rehabilitation Center lost power to the chiller components of their air conditioning unit. They placed eight spot coolers throughout the facility and contacted Florida Power and Light (FPL--the electricity provider for the nursing home), via email to restore power to the facility.

In contrast, the governor's office staff says that they had been informed that the nursing home was closed, but also had been told the heating and air conditioning units were functioning and operational.

B) Monday September 11, 2017: The nursing home says that FPL contacted the nursing home saying they would be there but did not show up. Later, Natasha Anderson, an official from the

Hollywood Hills Rehabilitation Center called the cell phone number provided by Governor Rick Scott, and left a message requesting immediate assistance stating that Hollywood Hills Rehabilitation Center needed to be made a top priority.

Later that day, Natasha Anderson once again contacted the state emergency line and was told that the nursing home has been upgraded to a status of "escalated." Anderson then contacted the Florida Department of Health, in Tallahassee, which allegedly told her that the emergency at the nursing home was being worked on.

At this point the governor's staff say that a call from Anderson, made earlier in the day, was passed on from an aide to Governor Scott and then passed on to the Department of Health (DOH) and to the American Health Care Association's (AHCA) Florida Offices, respectively.

Later that evening, Anderson contacted the DOH's emergency line, once again, letting them know she had not received any recent updates about the situation at the nursing home. Additionally, the governor's office said a power restoration request was put through, by them, to FPL. The governor's office said the chief of staff for the DOH, Alexis Lambert, told Anderson to call 911 if she felt that any of the patients were in danger.

C) <u>Tuesday, September 12, 2017:</u> The nursing home said that FPL spoke with administrators at the nursing home and were supposed to show up, but never did. That same morning, Anderson spoke with the DOH in Tallahassee and was told that many other nursing home and health care facilities throughout the state were experiencing electrical issues and all needed assistance from FPL.

Anderson then (again), called Scott's cell phone number and left a message. Later that morning, the governor's office said that an aide to Governor Scott forwarded the information

about phone calls from both Anderson and Jorge Carballo, the rehabilitation center's administrator, to both AHCA and the DOH.

Early that afternoon, Anderson again called Scott's cellphone number. Later that afternoon, Frances Cadogan, of Humana Health, did his rounds at the nursing home, and did not see any patients in distress. The governor's office said that by this point in the day a representative of AHCA, Susan Glass, the Health Services and Facilities Consultant told Carballo that if patients were in danger to call 911.

According to the nursing home, 13 calls had been put into FPL, while four calls had been placed to Governor Scott's cell phone. Between 6 p.m. and 11 p.m. a physician's assistant observed that the patients were all stable as Carballo walked throughout the nursing home, to sure patients were okay.

D) <u>Wednesday, September 13, 2017:</u> A 911 call was placed for a patient experiencing tachycardia at 3 a.m. The patient was stabilized and taken to Memorial Hospital, across the street. Another call was placed to 911 at this point, for a patient in cardiac arrest. An hour later, 911 was again called, this time for a patient experiencing breathing troubles; the patient was stabilized and taken to Memorial Hospital.

The Hollywood Hills Police Department said another patient, who was experiencing breathing issues, also was taken to Memorial Hospital by Hollywood Fire Fighters.

Approximately 20 minutes later, another 911 call was placed for another resident experiencing cardiac arrest. Within 10 to 15 minutes of the prior call, another call was placed for another patient experiencing cardiac arrest; this patient was pronounced dead by rescue workers. While rescuers were still at the nursing home, two more patients went into cardiac arrest. Ten

minutes later the nursing home claimed that the director of nurses for the nursing home, Maria Castro (Colon), was contacted along with Caraballo.

At approximately 5 a.m. both Memorial Hospital and the Hollywood Police Department stated that a nurse from Memorial Hospital, Judy Frum, went to check on patients of the nursing home, because so many were coming to the emergency room at Memorial; the police officers and Frum saw three people on the second floor of the nursing home were dead.

Approximately an hour later, Castro (Colon) was contacted by a nursing assistant of the nursing home informing her of the latest developments; Castro (Colon) immediately notified Carballo, who left his home to go to the nursing home.

At 6:30 a.m., patients were evacuated from the nursing home, with Castro (Colon) arriving between 6:30 and 6:45, according to the nursing home. That morning, FPL workers arrived to fix the transformer to which the air conditioning is connected: It took them 15 minutes to fix the problem, according to the nursing home.

The four cell phone messages left for Scott were deleted immediately by his aides at the request of Scott himself. Scott said he did not need to save the voicemails, citing Florida's Transitory Message Law.

II. An Overview of the Florida Public Records Law

A) How is "Public Record" Defined?

According to the Florida Reporter's Handbook, The Florida Public Records Law (Also known as The Sunshine Law), is defined as follows:

> Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board

> to discuss some matter which will foreseeably come before that board for action. There are three basic requirements of section 286.011, Florida Statutes:
> (1) meetings of public boards or commissions must be open to the public;
> (2) reasonable notice of such meetings must be given; and
> (3) minutes of the meetings must be taken and promptly recorded (Gleason, pg.1, 2017).

Additionally, according to Demeo and Dewell (2018), since the late 1800s Florida Public policy that states records and documents created for the discharge of various public offices, belong to those in the public forum, and not to those defined as a public figure on an individual basis (Demeo and Dewell, 2018). As time went on, society changed; so too did the definition of what constituted a public record in the state of Florida.

In 1922, The Florida Supreme Court defined a public record as, "One required by law to be kept , or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done. Memorial and evidence of something written said or done (Amos v. Gunn, 84 Fla. 285, 1922 Fla. LEXIS 397, 94 So. 615)." This version of the Florida Public Records Law would remain until 1980, when the case of *Shevin v. Byron, Harless, Schaeffer, Reid and Associates* changed the Florida Public Records law for the first time in over half a century.

In, *Shevin v. Byron, Harless, Schaeffer, Reid and Associates* (Fla. 1980), The Florida State Supreme Court redefined the definition of public records from *Amos v. Gunn,* to incorporate a broader spectrum of communications between agencies and businesses (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104). The interpretation of The Florida State Supreme Court was defined as follows: "All materials made or received by an agency in connection with official business which are used or perpetuate, communicate or formalize knowledge (Gleason, p. 31 2017)." In *Shevin,* The Jacksonville

Electric Authority (JEA), had hired a consulting to firm to find individuals who may be well-suited for a position with JEA, to serve in the capacity of managing director for the company (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104).

JEA's executive board stated that as part of the state's public records law, the consulting party's (i.e., the representative from the consulting firm) final document would be made public; any other notations or findings done as an aside to the final document, would not be made public (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104). However, prior to the final report being submitted, a local news station executive made a public records request to view all documents used by the consulting firm representative; the request was denied (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104).

The news executive contacted the Florida Attorney General at the time who filed a *Writ of Mandamus.* The Legal Information Institute (LII) at Cornell University defines *Writ of Mandamus* as: "an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion (Legal Information Institute, no page, 2019)." The assertion was made by the attorney general that under Chapter 119 of The Florida State Statutes, the news executive was entitled to all documents including notes made by the consulting firm representative, and being public records were admissible and subject to public perusal (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104).

While the trial court found in favor of the attorney general and news executive, the appellate court reversed the lower court's decision, which lead to a decision needing to be made

by The Florida State Supreme Court. The Supreme Court found in favor of the Attorney General and news executive with the reasoning that:

> To be contrasted with 'public records' are materials prepared as drafts or notes, which constitute mere precursors of governmental 'records' and are not, in themselves, intended as final evidence of the knowledge to be recorded. Matters which obviously would not be public records are rough drafts, notes to be used in preparing some other documentary material, and tapes or notes taken by a secretary as dictation. Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104).

The Florida Supreme Court additionally reasoned that: "[i]t is impossible to lay down a definition of general application that identifies all items subject to disclosure under the act (Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633, 1980 Fla. LEXIS 4104)." Interpretively, since a uniform policy would be realistically and logistically possible, each case will result in different circumstances (Demeo and Dewell, 2018). Essentially, the current public records law (Sunshine Law), is still largely (but not completely), based on this landmark case, as technology continues to take shape and evolve, effecting the law found in *Shevin*.

B) What Must Officials Do to Preserve Records?

According to Gleason (2017), Section 119.021 (4)(a), Florida Statutes Public records are to be kept to whomever has custody of them and will then turn them over to whoever succeeds them at the expiration of their term of office (Gleason, 2017). Should there not be a successor then the records are to be turned over to the division of library and information services at the State Department (Gleason, 2017).

Gleason (2017), also notes that statute 257.36 (6), of the Florida statutes states:

> [A] public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services of

> the Department of State. This statutory mandate applies to exempt records as well as those subject to public inspection (Gleason, p.64, 2017).

Of integral importance is the general record schedule (GS1-SL for state and local government agencies), and how it affects electronic communications.

> According to the general record schedule for electronic communications: There is no single retention that applies to all electronic messages or communications whether they are sent by email, and said messaging, text messaging (such as SMS, BlackBerry pin, etc.), multimedia messaging (such as MMS), Messaging social networking… Retention periods are determined by content, nature, and purpose of records, and are set based on their legal, physical, administrative, and historical values, regardless of the format in which they reside of the method by which they are transmitted (General Records Schedule, 2017).

C) What Records are Exempt from Preservation and Why?

According to the Sunshine law, the court systems in the state of Florida cannot create any exceptions to the Florida Public records law (Gleason, 2017). Additionally, the Florida Constitution in Article I, Section 24(c) reads as follows:

> This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject (Florida Constitution, 2019).

The case of National Collegiate Athletic Association v. Associated Press (2009), decided

that the Florida Public Records Act was to be "liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so that they are limited to their stated purpose (NCAA v. AP, 18 So. 3d 1201, 2009 Fla. App. LEXIS 14605, 37 Media L. Rep. 2400, 34 Fla. L. Weekly D 2009)."

Also, of importance is how the Florida Supreme Court has interpreted section 119.011 (12) of the Florida Statutes. The Supreme Court of the State of Florida has interpreted the statute as encompassing "all materials made or received by an agency in connection with official business which are used or perpetuate, communicate or formalize knowledge (Gleason, p. 31 2017)." Essentially, this means that in a court case involving the Sunshine Law, the lead legal authority in the case must decide whether or not a document expresses final evidence of knowledge, as stated in Chapter 119.011 (1), of the Florida Statutes.

III. Examination of the Exemption for Transitory Records

A) How are they Defined?

1) The Relevant Policy:

The State of Florida defines the transitory message law as follows:

> Electronic communications that are created primarily to communicate information of short-term value, such as messages reminding employees about scheduled meetings or appointments, might fall under the "TRANSITORY MESSAGES" record series. "Transitory" refers to short-term value based upon the content and purpose of the message, not the format or technology used to transmit it. Examples of transitory messages include, but are not limited to, e-mail messages or other communications reminding employees about scheduled meetings or appointments; most telephone messages (whether in paper, voice mail, or other electronic form); announcements of office events such as holiday parties or group lunches; and recipient copies of announcements of agency-sponsored events such as exhibits, lectures, workshops, etc.
> State of Florida Electronic Records and Records Management Practices
> Transitory messages are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. The retention requirement for transitory messages is "retain until obsolete, superseded or administrative value is lost." Therefore, electronic communications that fall into this category can be disposed of at any time once they are no longer needed (Florida State Department, pg. 15-16, 2018). Though this policy is used not as law, but as

> administrative guidance, it is still of integral importance as to how communications within the state are handled.

2) The Transitory Message Law in Other States:

For all intents and purposes, different states were chosen mostly based on location for the purposes of this report. Additionally, relatability was also factor considered in the choosing of the states. Nebraska was chosen because of where this report will be evaluated. New York was chosen as the Northeast state, because policies in the Northeast United States tend to lean more liberal. Georgia was chosen as a neighbor state of Florida. The exact opposite of Southeast is Northwest, therefore, the state of Washington was chosen for that purpose. Lastly the State of California, which also tends to be more liberal leaning, was also chosen.

Most of the states defined transitory records much the same as the state of Florida. For example, the State of Georgia's transitory message law is as follows:

> Records are generally classified as transitory, temporary short-term, temporary long-term, permanent, and vital. Transitory records are those that are of only short-term interest and have no documentary or evidentiary value. Examples may include calendars, blank forms, and event notices. Temporary short-term records are usually considered those with a useful life of less than 15 years, such as quarterly budget reports, and temporary long-term records are those that need to be kept 15 years or more but not permanently. Permanent records are things such as minutes, resolutions and ordinances. Specific laws may dictate how long certain records need to be kept (Canfield, 2019).

Many of the state's examined, have similar laws to Florida's transitory message law with little discrepancy much of a discrepancy. Mainly, what most states have in common is that notes memos and invitations or constituted as transitory messages can be deleted once they are no longer needed. However, while most states have a blanket transitory message policy to cover all state agencies, the State of Washington gives local government (i.e. Government at the city or town level), the authority to decide how to handle transitory messages. Essentially, the state of

Washington allows the local governments of each city or town, to interpret a transitory message law from The Local Government Common Records Retention Schedule, also known as C.O.R.E. (Secretary of State of Washington, 2017). For example, the city of Mercer Island, as a retention schedule that breaks the retention of electronic messages, in this case emails, down into three types of groups. The first group is known as the permanent record group. The retention period for the permanent record group applies to:

> Email sent or received by members of this group and shall be retained permanently emails will be stored on systems which the member or authorized agency employee has directed ongoing access. Members in this group are defined as elected officials, city manager, deputy or assistant city managers, city attorneys, department directors, public infrastructure engineers, public infrastructure managers, and emergency manager (Municipal Research and Services Center, 2019).

The second group is what is known as the seven-year group. This group's emails are retained for seven years' time in a data base that they will have direct access to and will then be permanently deleted (Municipal Research and Services Center, 2019). The members of this group include: City clerks, deputy or assistant directors, finance department employees, human resource department employees, police department employees, fire department employees, building officials, building inspectors, code enforcement/compliance officials, and facility manager (Municipal Research and Services Center, 2019).

The third and final group is known as the two-year group. Much like the seven-year group, records are retained for two years and then destroyed (Municipal Research and Services Center, 2019). The members of this group include "all agency employees who are not members of another retention group(Municipal Research and Services Center, 2019)."

Another unique stipulation in the State of Washington, is that some cities, including Olympia, have rules pertaining to transitory messages in the form of text (Not email). As Olympia drew from the state's CORE policy that "transitory records have limited value and can

be deleted when no longer needed for agency use (Secretary of State of Washington, 2017) ," it also acknowledged that, "if a public records request (PRA), is made and there are transitory and or other records that exist which are responsive to that request those records need to be made available to the PRA request or (subject to possible exemptions), regardless whether those records could have been deleted as transitory records before the agency received the PRA request (Secretary of State of Washington, 2017)." Suffice it to say, that Washington's transitory message policy with some similarities, varies greatly from that of the other five states examined.

B) How have Florida courts Interpreted the Exemption?

As noted, the Public Records Act is to be liberally construed in the state of Florida and therefore provides that each case be handled on the basis of its own facts. **Case 1: Miami Herald Media Co. v. Sarnoff, 971 So. 2d 915, 2007:** In the case of Miami Herald Media Co. v. Sarnoff (2007), the District Court of Appeals used the rule in Shevin (i.e. "[i]ntra-office memoranda communication information merely prepared for filing constitutes Public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business] Shevin, 1980)." The facts of this case are that a Miami City Commissioner, David Sarnoff, met with a former city of Miami official. Once the meeting had concluded, Sarnoff created a memorandum with what was said at the meeting with the former city official. Next, Sarnoff turned over the notes he had taken in response to a threat that he would be subpoenaed by the Miami-Dade State Attorney's office; Sarnoff also kept a copy of these notes for himself.

Later on, a Miami developer, known as The Related Group, submitted a request for public records which included the document Sarnoff had created. Sarnoff refused on the grounds that the document did not constitute a public record as defined in Chapter 119 of the Florida Statutes. The Related Group then decided to sue Sarnoff on the basis of failing to turn over the memorandum and for defamation for statements made in the memorandum with regard to The Related Group. The Miami Herald then filed a public records request for the memo, which proceeded to a trial at which the trial court found that Sarnoff's defense of the memo being for his personal use at a later time to be feasible, siding with Sarnoff. The case was brought to the Appeals Court where the memo was found to be a public record with the Court's rationale being the decision reached in the Shevin case, "[I]ntra-office memoranda communication information merely prepared for filing would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business (Shevin, 1980)."

Case 2: Granite State Outdoor Adver., Inc. v. City of Clearwater, 351 F.3d 1112, 2003:

The question that this case was trying to answer was:

> Whether all e-mails transmitted or received by public employees of a government agency are public records pursuant to section 119.011(1), Florida Statutes (2000), and Article I Section 24(a), of The Florida Constitution by virtue of their placement on a government-owned computer system if the agency has a written policy that informs the employees that the agency maintains a right to custody, control and inspection of e-mails (Granite State Outdoor Adver., Inc. v. City of Clearwater, 351 F.3d 1112, 2003)?

An employee of the Times Publishing Co. requested from the city of Clearwater of all emails sent or received between October 1, 1999 October 6, 2000. The employees from the city of Clearwater to call the emails and separated them into two groups: one public, one private.

The employees photocopied the emails the deemed public and sent them to the Times. The Times in turn, filed an action to get all of the emails. The Supreme Court found in favor of the city of Clearwater just as the two lower courts had as well, with the rationale:

> Personal e-mails are not made or received pursuant to law or ordinance or in connection with the transaction of official business and, therefore, do not fall within the definition of public records in section 119.011(1) by virtue of their placement on a government-owned computer system (Granite State Outdoor Adver., Inc. v. City of Clearwater, 351 F.3d 1112, 2003).

Case 3: Tribune Co. v. Cannella, 458 So. 2d 1075, 1984:

In this particular case, the facts are such that the Tribune Co. probably was requesting release of personnel files related to three Tampa area police officers who had been involved in an event where a suspect was shot and killed. The custodian of records in the case, a Ms. Sontag, refused to immediately release the files upon request because there was a city policy that personnel files could be held for seven days until the individuals whose personnel files were requested, were notified. The court found in this case that the only delay permitted is the time allowed for the custodian to retrieve the records and exempt any records that could be considered exempt under Chapter 119 of the Florida statutes. (Tribune Co. v. Cannella, 1984).

1) How Other States Have Interpreted the Exemption?

Most of the other states note that their Public Records laws are very liberal. However, two states of the six do have a significant amount of exemptions; New York and Washington. New York has 11 criteria as far why records can be exempt, yet it is not the most conservative when it comes to the public records. Washington state has historically been very stringent when it comes to allowing the public to view records, going as far as to leave it up to the determination of the custodian in charge of records at a given agency, and even if said custodian does allow

records to be released they still have the right to exempt information from the requested record and can be present when a requestor views the document (RFCP, 2019).

C) How has the Attorney General Interpreted Verbiage in the Public Records Law?

In an informal opinion on March 17, 2010 Secretary of State Kurt Browning sent a message to Bill McCollum, then attorney general for the State of Florida. The purpose of, then Secretary of State, Browning's letter was to find out how electronic records are handled, received, and then either stored or destroyed, essentially what the state does under the Public Records Law. Of key importance was McCollum's noting that he had formed a Sunshine's technology team to better identify how the Public Records Law in Florida is affected by various types of media including but not limited to SMS messages, texts, etc. McCollum asserted that "the Sunshine technology team identified that all electronic communication and government devices pass through the agency servers and as a result of those messages are able to be retained with the flip a switch (McCollum, 2010)." McCollum did not at that time say there were required retention guidelines as far as other types of electronic communications because they are as the state defines them, "transitory (McCollum, 2010)." McCollum also encouraged Browning to continue to find ways in which the Sunshine Law could keep pace with the ever-changing field of technology and the legalities it brings with it (McCollum, 2010).

In another attorney general's opinion, Chief J. Phillip Thorne of the Springfield, Florida, Police Department wrote to then state Attorney General Pam Bondi on January 25, 2012. Thorne's concern was that if a caller to the Springfield Police Department was told by an automated message that the line is recorded, when the caller gets in touch with a person, do they have to be notified again that there call is being recorded (Bondi, 2012)? Additionally, Thorne wanted to know if an employee of the department were to make a personal/private phone call,

using a department issued, work-purpose phone, would the person receiving said call, have to be notified that they are being recorded? Or should the police department look into getting phones for making personal/private calls, separate from the work-purpose phones considered property of the Springfield Police Department, and therefore would be discoverable under a public records request (Bondi, 2012).

In regard to the chief's first question Bondi cited Chapter 934 of the Florida statutes, which addresses interception of communication, referencing the state statute that says "its purpose is to ensure personal rights of privacy in oral and wire communications so that the Legislature can protect the privacy and rights of its state citizens (Bondi, 2012)." To answer the chief's second question Bondi explained that any telephone conversations outgoing from the Springfield Police Department during the business day could be considered a public record under the Florida Public Records Law, and, could also be subject to record exemptions as outlined in the Florida statutes (Bondi, 2012). Bondi further elaborated with the criterion she used to base her opinion:

> Thus, to be lawful under sections 934.03-934.09, Florida Statutes, the Springfield Police Department must request permission from the recipient of any outgoing call from the police department which the department intercepts and records unless such outgoing call is placed to the telephone number from which an emergency assistance call was made in order to obtain information required to provide requested emergency services (Bondi, 2012).

In an informal opinion from July 17, 2003, Patricia Gleason then general counsel for the State of Florida was asked by Cindy A. Laquidara, Jacksonville chief deputy general counsel, whether cell phones and cell phone numbers provided to law enforcement officers are considered public records (i.e. when they are being used by police officers while in their job capacity)? (Gleason, 2003).

Gleason responded by stating that according to Article 1, Section 24(a) of the Florida Constitution and also reflected in Chapter 119 of the Florida statutes, the Public Records Act that both the phone and phone number would be considered a public record and therefore, records on the phone and records tied to said phone's unique 10 digit phone number could be inspected by anyone who makes a records request (Gleason, 2003).

An assistant attorney general for the State of Florida, Ellen B. Gwynn, responded to a question from the mayor of the town of the Manalapan, Florida, David Cheifitz, informally on July 20, 2016, as to whether a quorum could exist between members of the town commission who were physically at a meeting and others who were at the meeting via teleconference? Gwynn noted, citing an opinion from Sugarman in August 2015, (A case in which an attorney with the last name of Sugarman, asked if it was permissible to interview candidates in the North via teleconference for a job offer in the city of Boca Raton, Florida, without breaking the Sunshine Law), that there is "no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the Board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting (Gwynn, 2016, citing Sugarman 2015)."

D) How Does Florida Law Governing Such Records Compare with the Laws of Other States?

The same states that were examined in section III) A-2, are the focal point of this section as well. When comparing the different state statutes there are few differences; however, some differences are significant. For example, in New York, 1989 a provision was added to public

record policy that would make it a violation for "any person to willfully conceal or destroy any record with the intent to prevent public inspection (1989 N.Y. Laws ch. 705)."

The other state that showed significant differences from Florida Public Records Law was that of the State of Washington. Washington's Public Records Law as it is today, started out in the 1970s and was brought about because of a "distrust of government accountability and misuse of government power during the civil rights and Vietnam-protest era (Stahl &Killeen, 2019)."

Prior to this occurrence, the open records law was more of a blanket common-law that was rarely ever litigated (Stahl and Killeen, 2019). One of the noted caveats to Washington's Public Records Law is that in "case of records which the official having custody is not required by law to maintain, the disclosure or nondisclosure of information contained therein is largely within the discretion of this official (Stahl and Killeen, 2019)." Essentially, an official of the State of Washington can decide what to disclose to the public and what to withhold from the public without even having to consult an exemption or have a justified reason as to why they are choosing to release or withhold information. The concept of exemptions has been brought up many times in Washington Public Policy Law, but so far has failed to become a part of the Public Records Law.

Of note in the State of California, in order to facilitate prompt access to public records, court orders for the disclosure of public records are immediately reviewable by an appellate court. In order for this to occur an "emergency petition seeking issuance of an extraordinary writ, must occur (Carolan & Carolan, 2019)."

IV. Conclusions

A) Do the Phone Messages Left on Scott's Phone fit the Definition of Transitory Records?

Scott's typical defense was that he could delete the messages because they were transitory in the nature, (Under state law, things such as an invitation to a birthday party or a schedule reminder have been considered transitory), and therefore solidifying rationale as to why he was able to delete the messages (Defede, 2017).

Another argument could be made that, much like in the case of Granite State Outdoor, which essentially found that because a type of media is stored on a government owned platform (in Granite's case a computer), does not mean it can have records stored on it made public, then Scott's argument could be that just because he had cell phone messages concerning a state issue stored on his phone does not necessarily mean that said records should be considered public records, and therefore subject to perusal by anyone who puts in a public records request. However, when looking at the other three aforementioned court cases (i.e. Shevin, Miami Herald, and Tribune), documents much like the electronic messages Rick Scott deleted from the cell phone were pertinent in each case.

In Shevin, the argument was made that because the paperwork was related to a public sector job the court found that the notes the consultant took could be viewed as public record. In looking at the Hollywood Hills Rehabilitation Center, it was a private entity that was receiving government funding, much like the way the consultant (a private-sector worker) in Shevin, was interviewing candidates for a public job. A parallel could be drawn that the two circumstances are very similar, and that if the notes of the consultant in Shevin were considered public records, then the cell phone records of Rick Scott could have been considered public records, as well.

In the Miami Herald case, though it appeared Sarnoff's document was about "potential" crimes committed and had nothing to do with official city business, the court still found that the "May Memorandum" (as it is referred to in the case), was also found to be discoverable as a public record. Looking at the cell phone messages left on Rick Scott's cell phone during Irma, this event had a lot to do with the state of Florida and in Scott's capacity as the state's government leader. If a document is said to exist containing potentially, (not definitively), criminal activity, that has nothing to do with city/government business in any capacity, yet can be considered a public record, then how come an electronic record that has everything to do with the benefit of the people and citizens of the State of Florida, not be considered a public record?

In the Tribune case, a custodian of records was not allowed to delay withholding records of law enforcement personnel, not even for a minuscule period of two days (i.e. 48 hours). Not only did Rick Scott have his aides delete the voicemails expeditiously, he also delayed, a public records request submitted by Gwen Graham (a candidate for governor in 2018), related to the phone messages, for more than three months (Man, 2018). While a government official in one case was not allowed any time to delay a public records request, it was somehow all right for the top government official in the entire state, to do so for a very significant amount of time.

B) If so, does this indicate a loophole in the Public Records Law that could expose important information to destruction?

The reasoning Scott put forth for the deletion of the messages and the delay of his release of the documents requested by Graham expose a huge loophole in the Transitory Message Law in the State of Florida. Florida must amend the law pertaining to public records and transitory messages to include any matter related to the state and/or its citizens, as such issues should not be deemed exempt from a public records request or be deemed transitory, in nature. Going

forward, the state must also look at the break-down in communication from the top government official in the state on-down and how this factor contributed to the dire situation at Hollywood Hills. A closer look at service providers roles, policies, and responsibilities should also be considered as FPL's lack of urgency and inattentiveness should be seen as a mitigating factor in in the demise of these poor individuals. Additionally, the law should specifically state that "voice-mails," be included, verbatim, in the law about what constitutes a public record, so that a tragedy and lack of transparency of this magnitude never occurs again.

C) **How did the Hollywood Hills Rehabilitation Staff View Scott's Providing of His Personal Cell Phone Number?**

Much focus has been brought to just how The Hollywood Hills Rehabilitation staff, especially the representative who was in teleconference with Scott when he offered his personal cell phone number to the various nursing home institutions who were in on the teleconference call that day. In a phone interview Geoff Smith, an attorney representing the Hollywood Hills Rehabilitation Center, gave his insight on the case and how those who worked for Hollywood Hills viewed his sharing of his personal cell phone number with them:

On July 11, 2018, Smith stated that "he felt it was easy to fall into the trap of everything reported by local news entities, and that very little factual information was released in the reporting of said agencies." To emphasize his point, Smith reiterated what Scott had stated at the meeting with statewide nursing home executives: "I'll make sure you get what you need." Smith felt the motivation for Scott was to offer his number in order to be perceived as a reliable individual people could count on, primarily, as Smith pointed out "during an upcoming election year." Smith did concede, from a legal standpoint related to state statutes, Scott did nothing, wrong in the eyes of the state of Florida and will likely not receive any discipline for his actions;

this is not to say Smith does not have any other issues with Scott. "The systems in the state, especially those related to health care, have had systematic flaws, and as governor, Scott should shoulder the blame for these flaws that have not been fixed and remain a problem," Smith stated.

Smith added, "If anyone is to be held legally responsible for the deaths of the nursing home patients, it should be FPL." Interestingly, Smith strongly felt only three of the deaths could be attributed to the loss of air conditioning at the nursing home, stating, "the other deaths were a result of a medical condition that would have happened, even if the air conditioning had not gone out, like a heart attack (G. Smith, personal communication, July 11, 2018)."

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