Carolyn Quinones

From: Richard Pringle
Sent: Thursday, January 15, 2026 5:00 PM
To: Carolyn Quinones
Subject: FW: Sunshine Law Violation Complaint of David Nadig - SAO Case # 25SI100

From: Kenney, Martin J. [redacted]
Sent: Thursday, January 15, 2026 3:35 PM
To: davidenadig[redacted]
Cc: Kenney, Martin J. [redacted]; Richard Pringle [redacted]
Subject: Sunshine Law Violation Complaint of David Nadig - SAO Case # 25SI100

Good afternoon:

I have completed my investigative inquiry relative to your complaint email of October 22, 2025, and the subsequent information you have provided over the past months.

Your complaint conveyed your belief that the San Carlos Estate Water Control District (SCEWCD) committed Sunshine Law violations in their handling of Florida State Statute (FSS) § 119 (Public Records) requests; and that the outcome of the SCEWCD's September 28, 2024, election was falsified.

Specifically, your public records complaint outlined the following three alleged violations:

Allegation 1. On October 1, 2025, you submitted a public records request to the SCEWCD for four (4) fiscal years of financial records. On October 3, 2025, in response to your request, the SCEWCD provided you with an estimated cost of $13,550 to fulfill your request. A review of the documents attached to your complaint provided the SCEWCD's response and their basis of their estimated cost, being 290 hours to perform the records review, redactions, copying of documents, and legal consultation.

Allegation 2. On October 2, 2024, you submitted a public records request to the SCEWCD requesting the election records for the September 28, 2024, SCEWCD election. You conveyed that the SCEWCD intentionally failed to provide the requested records until August 5, 2025, a delay of 10 months; and that the records received were incomplete.

Allegation 3. You reported a similar complaint to allegation 1, concerning a fellow landowner, Belinda Zivich. You advised that Ms. Zivich received what she believed to be an exorbitant estimate of $5,500 from her own public records request.

My assessment of the facts drawn from my communications and correspondence with you, my review of FSS 119 and the Florida Attorney General's Opinions on the Sunshine Law, as well as my conversations with SCEWCD manager John Cellucci, SCEWCD Attorney Richard Pringle, and your legal counsel, Attorney Noel Davies are as follows.

Assessment of allegation 1: You alleged that the SCEWCD intentionally attempted to impede your review of four (4) years of financial records, to include the front and back of negotiated checks, by providing an exorbitant and unreasonable estimate of approximately $13,500 for 290 hours to perform the records review, redactions, copying of documents, and legal consultation.

Per my research of the 2025 Government-In-The-Sunshine Manual:

> **Page 187 – c. Cost to review records for exempt information**
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> An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. AGO 84-81. However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. *See Florida Institutional Legal Services v. Florida Department of Corrections,* 579 So. 2d at 269. *And see Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (prior court decisions as well as the language in s. 119.07[4], F.S., dictate that the requester, who had submitted several voluminous public records requests for records which included confidential information "should be required to pay for the cost of searching, review, and redaction of exempted information prior to production").
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> Accordingly, because "the Public Records Act requires a records custodian to *determine* whether the requested records exist, *locate* the records, and *review* each record to determine if any of those records are exempt from production," the agency may charge the special service charge as authorized under s. 119.07(4)(d), F.S., for the cost to review voluminous requested records for exempt material. *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021). [Emphasis supplied by the court].
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> **Page 188 – d. Calculation of labor cost**
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> In *Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d DCA 2008), the court approved a county's special service charge pursuant to s. 119.07(4), F.S., which included both an employee's salary and benefits in calculating the labor cost for the special service charge, recognizing, however, that the charge must be reasonable and based upon the actual labor costs incurred by or attributable to the county. *See Trout v. Bucher,* 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections not required to charge the lowest hourly rate of the employee capable of doing the work needed to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S., because s. 119.07[4][d] allows the agency to charge the labor cost of the personnel that is "actually incurred" by the agency where extensive assistance is required).
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> The term "supervisory assistance" has not been widely interpreted. *See Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, concluding that an appropriate charge for supervisory review is "reasonable" in cases involving a large number of documents that contain some exempt information. In *State v. Gudinas,* No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), available online in the Cases database at the open government site at myfloridalegal.com, the circuit judge approved a rate based on an agency attorney's salary when the attorney was required to review exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions, and copying receipts of the copied our office has determined no violation of FS 119 exists as related to issues outlined. This concludes our inquiry into this matter, and no further action warranted.

I find the SCEWCD did not violate the Sunshine Law as "...the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task."

Assessment of allegation 2: You alleged the SCEWCD intentionally withheld fulfillment of your October 2, 2024, public records request of the SCEWCD's September 28, 2024, election records, for approximately 10 months, until their compliance on August 5, 2025. Additionally, you alleged that when the SCEWCD finally complied with the public records on August 5, 2025, that the records were incomplete.

Per my research of the 2025 Government-In-The-Sunshine Manual:

(Pages 172 & 173) 14. Amount of time allowed for response to public records requests

a. Duty to acknowledge requests promptly
The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), F.S. *Cf. Hewlings v. Orange County,* 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county's 45-day delay in *complying* with the request was unjustified for purposes of s. 119.12, F.S., authorizing an award of attorney's fees to a party who succeeds in a civil action resulting from an unlawful refusal to provide public records).

b. Automatic delay impermissible
A policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078-1079 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company,* 105 S.Ct. 2315 (1985). *And see Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332, 333-334 (Fla. 1st DCA 2015) (agency not authorized to automatically delay production by imposing a 24-hour notice requirement).
Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records. *Tribune Company v. Cannella,* 458 So. 2d at 1078. *Compare* s. 1012.31(3)(a)3., F.S., in which the Legislature has expressly provided that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified as prescribed by statute. Similarly, the Attorney General's Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote. AGO 96-55. *And see Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).

c. Unjustified delay
The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, "delay in making public records available is permissible under very limited circumstances." *Promenade D'Iberville, LLC v. Sundy,* 145 So. 3d 980, 983 (Fla. 1st DCA, 2014). In *Promenade,* the court noted that a records custodian could delay production to determine whether the records exist, s. 119.07[1][c], F.S.; if the custodian believes the some or all of the record is exempt, s. 119.07[1][d]-[e]; or if the requesting party fails to forward the appropriate fees, s. 119.07[4], F.S. Otherwise, the only delay in producing records permitted under Ch. 119, F.S., "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Id.* at 983, citing *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company,* 105 S.Ct. 2315 (1985). Where the delays aren't justified, "the Public Records Act holds officials accountable." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018).

Thus, an agency's unjustified delay in producing public records constitutes an unlawful refusal to provide access to public records. *See Lilker v. Suwannee Valley Transit Authority,* 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). *See also*
State v. Webb, 786 So. 2d 602, 604 (Fla. 1st DCA 2001) (error for a lower court judge to vacate a misdemeanor conviction of a records custodian [Webb] who had been found guilty of willfully violating s. 119.07(1)(a), F.S., based on her "dilatory" response to public records requests).
For example, in *Promenade D'Iberville, LLC v. Sundy, supra,* the appellate court determined that an agency violated the Public Records Act by refusing to provide non-exempt public records until a court denied its motion for a protective order to block the requestor (an adversary in out-of-state litigation) from using the Act. Similarly, a trial judge erred by granting the agency's motion to dismiss on the grounds that the agency ultimately provided the record three months after the request was made and two weeks after the request for mandamus relief had been filed. *Consumer Rights, LLC v. Bradford County, Florida*, 153 So. 3d 394, 398 (Fla. 1st DCA 2014). Instead, the judge should have conducted a hearing to determine whether the delay was justified.
Id.

By contrast, a trial court judgment finding no violation of the Public Records Act when a canvassing board failed to produce minutes of a March 13, 2020 canvassing board meeting until several months after an agreed upon deadline was upheld in *Jackson v. City of South Bay,* 358 So. 3d 18 (Fla. 4th DCA 2023). The court found that the board provided several meeting minutes but one meeting was overlooked. Upon discovery, the minutes were

immediately provided to the petitioner. Additionally, the judge cited a "busy election" and the ongoing pandemic, as well as the board's good faith response. Accordingly, the delay in production "did not amount to an 'unlawful refusal'; rather the delay was justified under the circumstances of this particular case." *See also Lang v. Reedy Creek Improvement District,* No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), *affirmed per curiam*, 675 So. 2d 947 (Fla. 5th DCA 1996), available online in the Cases database at the open government site at myfloridalegal.com, the circuit court rejected the petitioner's claim that the agency should have produced requested records within 10, 20 and 60- day periods. The court determined that the agency's response to numerous (19) public records requests for 135 categories of information and records filed by the opposing party in litigation was reasonable in light of the cumulative impact of the requests and the fact that the requested records contained exempt as well as nonexempt information and thus required a considerable amount of review and redaction.

Stated another way, the Public Records Act "demands prompt attention and a reasonable response time, not the quickest-possible response." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). In *Siegmeister*, the court noted that the agency had not "intentionally or unjustifiably delayed responding" to a public records request because it took two weeks for the response to be delivered to the requester. *Id.* at 74. *Cf. Florida Agency for Health Care Administration v. Zuckerman, Spaeder, LLP*, 221 So. 3d 1260, 1264 (Fla. 1st DCA 2017) (trial court abused its discretion by issuing a writ of mandamus requiring health care agency to produce a large number of public records within 48 hours when the records could not be reviewed for redaction of exempt information within this "compressed time period;" trial court also erred by requiring the agency to produce the records prior to the requester's payment of the agency's invoices associated with production of the records).

Moreover, recent cases have emphasized that in order for a delay to constitute an "unlawful refusal" for purposes of the award of attorney's fees under s. 119.12, F.S., the delay must be "unjustified." *See e.g., Consumer Rights, LLC v. Union County,* 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied,* 177 So. 3d 1264 (Fla. 2015) and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396, 401 (Fla. 4th DCA 2016). *See also* the discussion on pages 199-203 relating to attorney's fees awarded under s. 119.12, F.S., for an "unlawful refusal" to provide access to public records.

The supporting documentation provided by you with your complaint acknowledged that on January 25, 2025, you conceded that the SCEWCD's original response may have been received and accidently deleted in your email's spam folder. I find from this documentation and other examples that the SCEWCD has been timely and responsive to your communications.

In addressing the second part of your allegation that the September 28, 2024, election records, provided to you on or about August 5, 2025, were incomplete, I confirmed that your assertion was correct. My inquiry determined that the SCEWCD provided you on August 5, 2025, 282 election records; and that in the process of fulfilling a separate and subsequent public records request on or about November 19, 2025, it was determined that there were 283 election documents. On December 13, 2025, the SCEWCD provided a new and complete set of 283 election records to you as a remediation to their original fulfillment error.

I find that the SCEWCD did not violate the Sunshine Law as I believe from the evidence at hand, your public records request was acknowledged timely; that the discrepancy of the missing election document appeared to be an operator/copy machine error; and that upon notification of the discrepancy, the public records request fulfillment was appropriately remediated.

Assessment of allegation 3: You reported a similar complaint to allegation 1, concerning a fellow landowner, Belinda Zivich. You advised that Ms. Zivich received what she believed was an exorbitant estimate of $5,500 from her own public records request.

We are unable to accept your submission of Ms. Zivich's concern. Ms. Zivich will need to file her own complaint with our office. Please note, as the facts of her concern closely mirror your first allegation, the conclusion of our inquiry would potentially be the same resolution.

In conclusion, I found no actionable violation of the Sunshine Law and or FSS 119 as related to your allegations. As for your allegation that the results of the SCEWCD election were falsified, please direct your complaint to the Florida Department of Law Enforcement's Election Fraud Unit at (850) 410-7438.

This concludes the State Attorney's inquiry into this matter, and no further action is warranted.

Respectfully yours,

Martin J. Kenney, CFE, CECFE
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