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POLITICS

Florida's century-old Sunshine Laws under duress as DeSantis tries to redefine them

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Gov. Ron DeSantis gives his State of the State Address during the Joint Session in the House of Representatives on the opening day of the 2023 Legislative Session, Tuesday, March 7, 2023. ALICIA DEVINE *Tallahassee Democrat*



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TALLAHASSEE

Two years ago, Orlando television reporter Mike DeForest requested some routine travel and budget expenses from a state agency that had given him contractor license records within days, but this request took more than three months. He decided to ask why, so he asked for more records.

After months of delays, the WKMG-TV investigative reporter got lawyers involved and only then did the governor's office turn over records — a 10-page handwritten log of public records requested by the public that were under review by the governor's office.

The log recorded the date the request was received and the date the documents were returned. It was titled "Papers Routed Through EOG Legal," and [it revealed that while state agencies](#) often assembled documents within days of receiving a public records request, if the request was made by reporters or involved information of high value to the governor, the Executive Office of the Governor (EOG) kept them for review, where they sat for as long as nine months.

"It was the first time I was able to see that these are mostly being prejudiced [against] news organizations," DeForest said in an interview. "It's an extra hurdle that the Constitution doesn't call for."

MORE THAN A CENTURY OF OPEN ACCESS TO RECORDS

Florida has earned a reputation for some of the broadest open records and public meeting laws in the nation. Known as Sunshine Laws, they were first approved by lawmakers in 1909, expanded in 1967 and added to the Florida Constitution by voters in 1992.

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Most governors bristle at having to turn over internal musings, emails and transactions to the public, but Gov. Ron DeSantis, who came to office [with an aggressive approach to exercising executive authority](#), has been more combative than most of his predecessors.

“We’re heading into dark times, and this is Sunshine Week,” said Michael Barfield, director of public access at the [Florida Center for Government Accountability](#), a public records watchdog. Sunshine Week is recognized by First Amendment advocates across the nation to call attention to the importance of public access to government information. Sunshine Week this year was the week of March 13.

READ MORE: After a lawsuit from the Miami Herald and other news organizations, a judge finds that [Florida defied public records law on child’s death. Taxpayers’ tab: \\$376,000.](#)

Since DeSantis took office, the number of exemptions to the state’s public records law has expanded, and the interpretation of what is a public record has shifted.

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In his first year, for example, lawmakers expanded the list of personal details exempt from public records on public officials. Last year, DeSantis signed a law shielding information about candidates for state college and university presidencies.

IT TOOK LAWSUITS TO OBTAIN COVID RECORDS

During the pandemic, the Department of Health shielded some case numbers, contact tracing data and testing details. It barred [medical examiners from releasing COVID-19 death counts](#). And when the Miami Herald threatened to file a lawsuit against DOH for withholding public information about deaths in nursing homes, the governor's office [attempted to quash the lawsuit](#) by applying pressure on the Herald's law firm.

In 2022, the governor's lawyers advanced an unprecedented interpretation that claims for the first time that he has an executive [right to keep key government records secret](#) from the public. And this year, the governor is urging the Legislature to make Florida the first state in the nation to [weaken the legal precedent protecting](#) the public and journalists who publish critical comments about public figures.

"All these pieces are interlinked, and it's clear that what it really is aimed at, in my opinion, is creating shade and to allow them to hide," said Bobby Block, executive director of the [First Amendment Foundation](#), a nonprofit open government advocacy group.

HIRE A LAWYER

WKMG-TV wasn't the only organization that had to hire lawyers before its records requests were returned last year.

It took a court ruling for the public to get access to 60,000 Department of Health COVID-19 records, but they came long after they were useful to inform the public, Barfield said.

It took both a judge and lawyers to intervene for the Florida Department of Transportation and Executive Office of the Governor to release the details of how they spent taxpayer money in relocating migrants from Texas to Massachusetts last year.

In another instance, it took a court order before the governor's director of public safety, Larry Keefe, turned over records showing he conducted state business with a private email account — an [email address with the alias "Clarice Starling"](#) — a reference to the Jodie Foster character in "Silence of the Lambs." The records suggest that Keefe wrote some of the language that the private contractor, Vertol Systems Company, used in its bid proposal for the project.

Many legal fights continue.

FLCGA has filed a [lawsuit against New College of Florida](#) and one of its new trustees, Christopher Rufo, accusing it of withholding public records in violation of state law.

In October, Circuit Judge J. Lee Marsh ordered the governor's office and the governor's chief of staff, James Uthmeier, to turn over records, including phone and text logs relating to the governor's plan to relocate 49 migrants from San Antonio to Martha's Vineyard.

The governor's lawyers turned over phone bills for what appears to be a cellular account for someone in the governor's office but not the "messages sent or received from private devices," including the phone used by Uthmeier to communicate about the migrant flights, as the judge ruled.

FLGCA is now suing the governor for contempt.

CITING VOLUME OF REQUESTS FOR DELAYS IN RESPONDING

Despite the court battles, the governor's agencies often cite enormous backlogs and lack of staffing to be able to fulfill public-records requests.

In November, the Miami Herald/Tampa Bay Times Tallahassee Bureau asked for the Florida Department of Law Enforcement's version of the governor's daily schedule for the last weeks of his reelection campaign.

This week, FDLE responded that there were 527 unfilled public records that had been received prior to the Herald/Times' request and "due to the sheer volume and serious staffing shortage, we are unable to provide a fulfillment date."

The state's [Sunshine Act doesn't specify how long public officials have to turn over records](#), except that it must be "within a reasonable time." In 1984, the Florida Supreme Court ruled that the "only delay" permitted in producing public records is the time it takes for a records custodian to retrieve the document and redact any information exempt from its release.

DeForest, who covers the Orlando region, worries that if the governor is able to delay records on the state level by failing to provide the resources to meet the need, "what example is he setting for counties and cities and municipalities about their need to turn over public records quickly?"

Sen. Lori Berman, a West Palm Beach Democrat, said there are more than three dozen records exemption bills filed this year that she said will allow the state to shield even more from the public.

Because the governor and his staff often routinely refuse to answer basic questions from the public and reporters about their operations and intent, people file records requests just to get answers to things that could be handled with more transparency, she said.

For example, unlike other governors, DeSantis does not release his public schedule in advance, so the public often doesn't know his whereabouts unless his press office announces a news conference.

"Those events are often not accessible to the public, and I feel like people are there more because it's like a campaign event than a public event," Berman said. "That's a real slippery slope."

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