



PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

David P. Persson**
Andrew H. Cohen
Kelly M. Fernandez*
Maggie D. Mooney*
R. David Jackson*
Regina A. Kardash*
Lori M. Dorman
Andrew W. Mai

* Board Certified City, County and Local Government Law

** Of Counsel

Telephone (941) 306-4730
Facsimile (941) 306-4832
Email: kfernandez@swflgovlaw.com

Reply to: Venice

MEMORANDUM

TO: City Council

FROM: Kelly M. Fernandez, Esq., City Attorney

DATE: July 6, 2021

RE: Closed Meetings to Discuss Security Matters

Recently I was directed by City Council to review whether any exceptions to the Florida Sunshine Law exist that would enable Council to discuss security measures, particularly those related to cyber-security, in a non-public meeting. Based on a review of applicable state law, there is only a narrow range of topics Council may discuss in such meetings.

As it pertains to public records, Florida law does allow the non-disclosure of various documents related to security. However, Section 119.07(7), F.S., provides that an exemption from Section 119.07, F.S., "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Section 286.011 is commonly referred to as Florida's Sunshine Law. Thus, exemptions from the Public Records Act do not by implication allow the City to conduct a closed meeting to discuss exempt records absent a specific exemption from the Sunshine Law.

The Sunshine Law provides no general exemption for discussions related to security. However, the following exemptions of relevance exist:

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
236 Pedro Street
Venice, Florida 34285

1. Sections 281.301(1) and 286.0113(1), F.S. exempt portions of meetings relating directly to or that would reveal a security or firesafety system plan for any property owned by or leased to any political subdivision. Florida law defines “security or firesafety system plan” to include the following:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

2. Section 286.0113(3)(a), F.S. exempts portions of meetings held by a utility owned by a local government that would reveal information technology security records made exempt, including:

- a. Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- b. Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- c. Customer meter-derived data and billing information in increments less than one billing cycle.

Also of note, the “State Cybersecurity Act,” contained in Section 282.318, F.S., allows closed meetings to discuss certain exempt records related to cybersecurity, but it only pertains to state agencies.

Should City Council choose to conduct a closed meeting to discuss any of the foregoing matters exempted from the Sunshine Law, the meeting must be transcribed and recorded.