

# Florida Laws and the Search and Screening Process Reference Guide

## Florida Government in the Sunshine Law (Florida Statutes, Chapter 286)

### *What is the Florida Sunshine Law?*

Florida's Government-in-the-Sunshine law protects the public from “closed door” decision making and provides a right of access to governmental proceedings at both the state and local levels. Virtually, all state and local collegial public bodies are covered by the open meetings requirements.

### *When are Search Committee Meetings subject to the Sunshine Law?*

- a. If at least two members of the search committee are discussing search committee-related business, that discussion constitutes a meeting subject to the FL Sunshine Law.
- b. If a search committee has delegated authority to screen applicants and determine which applicants to reject from further consideration, the committee is performing a policy-based decision-making function; therefore, the meeting is subject to the FL Sunshine Law. Additionally, when a committee has a decision-making function, in addition to fact-finding, the Sunshine Law is applicable.

**Note:** *If you determine your search committee meetings are subject to Sunshine Law, all parties involved in the search must comply with each of the requirements of a Sunshine meeting as outlined below.*

## Search Committees and the Sunshine Law

1. The meeting must be open to the public and held in a location that is easily accessible to everyone.
2. Reasonable notice of such meetings must be given.
  - i. Notice should be posted at least two (2) days prior to the scheduled meeting. Notice can be posted on University of Central Florida’s (UCF) website. For more information on placing a public notice, please contact Talent Acquisition via email at [talent@ucf.edu](mailto:talent@ucf.edu).
  - ii. Notice should include the following information: P o s i t i o n N a m e, D a t e, T i m e, and L o c a t i o n o f m e e t i n g.
  - iii. If the meeting will be conducted virtually, the virtual access link must be included in the notice.
3. Minutes of the meeting must be taken (these are not a verbatim transcript of discussions; rather, the minutes should capture the framework used by the committee to make decisions and a summary of the decisions made).
4. Members of the committee cannot discuss search committee business outside of official committee meetings.

## **Florida Public Records Law (Florida Statutes, Chapter 119)**

*What is the Florida Public Records Law?*

The Florida Public Records Law creates a right of access to records made or received in connection with official business of a public body. This law states that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Florida Legislature.

**Note:** *Over the years, the definition of what constitutes “public records” has come to include not just traditional written documents such as emails, papers, maps and books, but also tapes, photographs, film, sound recordings and records stored in computers.*

### **Search Committees and the Public Records Law**

Documents related to the search are considered public records, with the exception of personal notes for recall purposes. A public record is any document, in any form (paper, email, text, electronic, etc.) made or received in connection with the transaction of university business. Any member of the public is entitled to inspect and/or copy public records sent or “received” by the university. Also, all search records are required to be maintained for a period of four years (4) ([UCF Records Retention Schedule](#) ).

A committee member’s jotted, personal notes used in meetings, such as those made during phone call reference checks, usually are not public unless committee members share them with others or submit them as their vote.

The designated search manager and the search committee chairperson are responsible for ensuring that all search-related documentation is collected and maintained per federal and state requirements.

When search firms are engaged as part of the search process, they are required to collect and maintain search records in a legally compliant manner on behalf of the university. Please reach out to your [Human Resources Business Center](#) for additional information.

### **Search Firms, Public Records & the Public Records Law**

Documents created or received by a private entity on its own behalf are not public records. This means that search firm records sent, received, or maintained by the search firm on its own behalf, and not on behalf of the university in connection with a particular search, are not public records. For example, if a search firm maintains its own database of CVs, those documents are not public records.

However, CVs (or other application materials) gathered by the search firm for a particular university search are considered public records and are open to inspection *even if those materials are maintained on the search firm’s database*. In other words, if a candidate submits a CV or other information to the search firm for a particular university search, that information is a public record. The fact that the information is on a secure intranet site rather than a UCF platform does **not** remove the public record designation. Prior to the candidate submission of CV’s or related materials to the search firm for consideration, the candidate can remain anonymous and not subject to public records requests.

Search firms can interview candidates by phone or video conference, take personal notes of all relevant information, and maintain the confidentiality of that information so long as the search firms do not provide university officials with access to these materials for a particular search.

Search firms can have one-on-one discussions with other search firm members to discuss the results of their conversations with candidates without violating the FL Sunshine Law.

## **Responding to a Request for Public Records**

It is the policy of the University of Central Florida to comply with Florida's public records law and Florida's retention schedules for public records. Any University of Central Florida department, office or employee must accept public records requests when asked.

When a request for public records is initiated, the department, office or employee should send a copy of the public records request to the UCF Custodian of Public Records which is the Office of the General Counsel before fulfilling the request. The Office of the General Counsel will provide guidance in determining what records are exempt from disclosure. For guidance on this process, please contact the Office of the General Counsel at (407) 823-2482 or email at [gcounsel@ucf.edu](mailto:gcounsel@ucf.edu).

## **Florida Senate Bill 266 and Florida Board of Governors Regulation 9.016 Regarding University Diversity, Equity, and Inclusion (DEI) Activities and Programs**

*What is Florida Senate Bill 266 (SB 266)?*

SB 266 prohibits a university or university direct-support organization (DSO) from expending any state or federal funds, regardless of source, to promote, support, or maintain any programs or campus activities that:

- (a) Violate section 1000.05 Florida Statute (Discrimination against students and employees in the Florida K-20 public education system prohibited; equality of access required); or
- (b) **Advocate for diversity, equity, and inclusion**; as defined by BOG 9.016; or
- (c) **Promote or engage in political or social activism**, as defined by BOG 9.016.

*What is Florida Board of Governors Regulation 9.016?*

Florida Board of Governors Regulation 9.016 (FL BOG Reg 9.016) is the specific regulation that provides guidance to the State University System of Florida member universities on compliance with SB 266.

### **Key Definitions:**

- Diversity, Equity or Inclusion or DEI is **any program, campus activity, or policy that classifies individuals** on the basis of race, color, sex, national origin, gender identity, or sexual orientation and **promotes differential or preferential treatment of individuals** on the basis of such classification.
- For purposes of the search process, any programs or campus activities are defined as any activities authorized or administered by the university or a university's DSO that involve:
  - **Hiring, recruiting, evaluating, promoting, disciplining, or terminating university employees or contractors.**

## **Search Committees and SB 266 and FL BOG Reg. 9.016**

This Senate Bill and Board of Governors Regulation prohibits the university from advocating for diversity, equity, and inclusion when it engages in a program, policy, or activity that advantages or disadvantages or attempts to advantage or disadvantage an individual or group based on their protected class status to equalize outcomes, participation or representation as compared to other individuals or groups.

Examples of prohibited search committee activities include requesting that candidates submit a diversity statement with their application or making inquiries about a candidate's commitment to diversity during the interview process. However, it is permissible for the search committee to inquire about a candidate's

approach to cultivating a welcoming learning environment (for example, “How do you create a welcoming and respectful learning environment for students with varying backgrounds, experiences, and abilities?”

NOTE: UCF is required to comply with federal (including, but not limited to, Title VII of the Civil Rights Act, the Vietnam Era Veterans Readjustment Assistance Act, and Section 503 of the Rehabilitation Act) and state nondiscrimination laws (Florida Civil Rights Act). Florida Senate Bill 266 and Florida Board of Governors Regulation 9.016 do not supersede the university's obligations to comply with these laws.

When search firms are engaged as part of the search process, they are also required to comply with SB 266 and FL BOG Reg. 9,016 in conducting their candidate screenings.