



June 16, 2017

The Honorable Joe Negron, President
The Florida Senate
Room 409, The Capitol
Tallahassee, FL 32399-1100

The Honorable Richard Corcoran, Speaker
Florida House of Representatives
Room 420, The Capitol
Tallahassee, FL 32399-1300

Re: LSKS June 13 Letter on behalf of POLITICO

Dear Mr. President and Mr. Speaker:

We are writing in response to the June 13 letter from the law firm Levine, Sullivan, Koch (LSKS) and Schultz sent on behalf of POLITICO concerning a series of public record requests made by POLITICO reporter Matt Dixon for text messages sent or received by certain members of the legislature relating to legislative business. Such text messages are clearly public records and subject to disclosure under Art. I, s. 24(a), Fla. Con., and s. 11.0431, F.S.

According to the LSKS letter and Mr. Dixon, he has received – and continues to receive – some records in response to his requests. However, some legislators included within the request responded by saying there are no records responsive to the request.

Text messages are routinely sent or received on personal communication devices and many public officials, including legislators, routinely use their personal devices and personal email accounts when communicating about public business. Those text messages and email are public record subject to disclosure and retention requirements. However, such communications generally aren't captured on government servers and when requests such as Mr. Dixon's are made, it is incumbent on each government official – in this case, each legislator subject to the request – to make a search for responsive records on his or her personal device.

An additional concern related to Mr. Dixon's requests are the lack of specific retention requirements for legislative records that aren't routinely sent or received through the Senate or House servers.

Article I, s. 24(c), Fla. Con., specifically allows the Senate and House to “adopt rules governing the enforcement of” the constitutional right of access to legislative records. Those rules – Senate Rule 1.48 and House Rule 14.2 – differ, but each is rather vague and results in inconsistent treatment by legislators with a significant amount of variation in treatment concerning the retention of public record communications sent or received on a personal communication device. Thus, when Mr. Dixon receives a response that there are no records responsive to his request, there is no way to determine

– absent a forensic inspection of each communication device – whether there *were* records that have since been deleted.

Government agencies and public officials subject to ch. 119, Florida’s Public Records Act, are subject to very specific record retention requirements established by the Department of State, Division of Library and Information Services, pursuant to se. 119.021(2)(a), F.S. To destroy a public record prior to its scheduled destruction date is a violation of law.

Considering the vague retention standards in current legislative rules, we respectfully recommend that a review of those rules be conducted with the goal of adopting retention requirements for all legislative records that comport with the retention schedules promulgated by the Division of Library and Information Services.

In addition, we would suggest that you may want to consider using email and text management software that allows for the automatic capture and indexing of communications sent or received on personal communication devices, regardless of the service provider. A number of local governments are currently using such software, including Orange County. The use of this type of software provides for oversight and accountability guaranteed by the Florida Constitution and can set a standard for all government agencies in Florida.

We appreciate your attention to our concerns, Mr. President and Mr. Speaker. If you have any questions or if we can be of any assistance, please don’t hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

Cc: Matt Dixon, Reporter, POLITICO
Jon Kaney, General Counsel, First Amendment Foundation