

Records, facsimiles of documents

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Subject:
Records, facsimiles of documents

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RE: PUBLIC RECORDS--STATE, DEPARTMENT OF--facsimiles of documents when copies for more permanence may be treated as intermediate documents which may be destroyed.

QUESTION:

Is a facsimile document which has been copied by the receiving public agency a public record which must be maintained pursuant to Ch. 119, F.S.?

SUMMARY:

If a facsimile document is subsequently copied by the receiving agency, the facsimile document is considered an intermediate document which may be destroyed without specific consent of the Division of Library and Information Services, Department of State. The copy of the facsimile then is retained as a public record.

It is the general policy of this state that all state, county and municipal records are to be open for personal inspection at all times by any person.[1] Section 119.011(1), F.S., defines "[p]ublic records" to include:

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, *regardless of physical form or characteristics*, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (e.s.)

This definition has been interpreted by the Supreme Court of Florida to encompass all materials made or received by an agency in connection with official business used "to perpetuate, communicate, or formalize knowledge of some type." [2] Thus, it would appear that a facsimile copy of a document received by a public agency in the course of its official business is a public record which perpetuates, communicates or formalizes knowledge.

It has been recognized, however, that in contrast to public records are materials prepared as drafts or notes which constitute mere precursors of governmental records and are not in and of themselves intended as final evidence.[3] This office has been informed by the Division of

Library and Information Services in the Department of State,[4] that facsimiles of documents may be photocopies and *when so copied* are considered then intermediate documents which are not public records and may be destroyed.[5] The copies of facsimiles, however, become the public records subject to the provisions in Ch. 119, F.S.[6]

As the agency charged with providing assistance and advice to public officials regarding the preservation, creation, filing, and availability of public records, advice from Records Management Services interpreting the custodial requirements of Ch. 119, F.S., must be given great weight.[7] Accordingly, unless legislatively or judicially determined otherwise, facsimile copies received by a public agency which are copied to produce a more permanent record may be treated as intermediate records which may be destroyed.

Sincerely,

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RAB/tls

[1] Section 119.01(1), F.S.

[2] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[3] See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, *supra* at 640.

[4] Section 119.09, F.S., states that the Division of Library and Information Services, records and information management program, of the Department of State shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody.

[5] *Cf.* AGO 85-87 (machine-readable intermediate files which are mere precursors of governmental records and are not intended as final evidence of the knowledge to be recorded, but are used by data processing computer equipment to prepare further records, are not public records).

[6] Records Management Services has informed this office that a prudent procedure would be to have the original from which the facsimile was transmitted forwarded to the receiving public agency.

[7] See *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988) (construction of statute by agency charged with its enforcement and interpretation is entitled to great weight).