

FLORIDA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

LEGISLATIVE UPDATES – IMPACTS TO PURCHASING AND CONTRACTING

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Suzanne D'Agresta is a shareholder with Brown, Garganese, Weiss & D'Agresta, P.A. She is certified by The Florida Bar as a specialist in City, County and Local Government Law, and has significant experience in transactional and litigation matters involving School Boards. She concentrates her practice in the area of local government law. She is the recipient of the highest rating (AV) given by Martindale-Hubbell for legal ability and ethics. Ms. D'Agresta is recognized as a Florida Super Lawyer by *Law and Politics*. She is a member of the Florida School Board Attorney's Association, and served as its President in 2006. She was appointed to the City, County and Local Government Certification Committee for the maximum 6 year term and the Ninth Circuit Grievance Committee "D" for the maximum 3 year term. She is also a member of the National School Board Association/Council of School Attorneys, and The Florida Bar Education Law Committee.

Ms. D'Agresta currently serves as the school board attorney for the School Board of Indian River County, and has performed significant legal work for other school boards and cities in Florida. She is a frequent speaker on such local government issues as Sunshine Law, public records, public procurement and employment matters.

Ms. D'Agresta is admitted to practice in Florida state and federal courts. She is admitted to The Florida Bar, and the Bars of the United States District Court for the Middle District of Florida, the United States Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States. She earned her law degree from the University of Florida, and received her Bachelor's degree from the University of Central Florida.

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TOPICS FOR DISCUSSION

- I. Security of Confidential Personal Information**
- II. Public Records Contract Requirements**

I. Security of Confidential Personal Information

§ 501.171, Florida Statutes, passed into law during the 2014 Legislative session and effective July 1, 2014.

Requires School Boards (and other governmental entities) and third party agents to take reasonable measures to protect and secure data in electronic form containing personal information.

I. Security (continued)

Definitions

Breach of Security means the unauthorized access of data in electronic form containing personal information.

Third Party Agent means an entity that has been contracted to maintain, store or process personal information on behalf of a governmental entity.

I. Security (continued)

Personal Information means either:

1. First and last name in combination with one or more of the following:
 - Social Security number
 - Driver's license number
 - Passport number
 - Military ID number
 - Other government issued number used to verify identity
 - Financial account number with security code or password
 - Credit/debit card number with security code or password
 - Medical history, condition, treatment or diagnosis
 - Health insurance policy number and unique identifier

- OR -

2. Username/email address with a password or security question and answer.

I. Security (continued)

Notice to Department of State

Required to provide notice to the Department of State of any breach of security affecting 500 or more individuals in Florida, no later than 30 days after determination of breach of security or reason to believe breach occurred.

Statute specifies content of notice.

I. Security (continued)

Notice to Individuals

Required to provide notice to each individual in Florida whose personal information was accessed as a result of a breach, no later than 30 days after determination of breach of security or reason to believe breach occurred.

Timeline for notice to individuals may be affected by law enforcement investigation.

Statute specifies content of notice and substitute notice.

I. Security (continued)

Notice to Credit Reporting Agencies

Required to provide notice to credit reporting agencies of breach of security affecting 1,000 or more individuals, without unreasonable delay.

I. Security (continued)

Notice by Third Party Agents

Third party agents are required to provide notice to the governmental entity no later than 10 days after determination of breach of security or reason to believe breach occurred.

Upon receiving notice, governmental entity required to be provide notices to Department of State and individuals.

Third party agents may provide notices to Department of State and individuals on behalf of governmental entities; however, if done improperly it is deemed a violation against the governmental entity.

Third party agents are required to take reasonable measures to dispose of customer records containing personal information when records are no longer needed.

I. Security (continued)

The statute does not require vendor contracts to address notice of breach of security regarding personal information or records disposal, but...

II. Public Records Contract Requirements

§ 119.0701, Florida Statutes, passed into law during the 2013 Legislative session and effective July 1, 2013.

Requires very detailed public records provisions in contracts with vendors “acting on behalf of the public agency.”

II. Public Records (continued)

In June 2014, the Florida Attorney General was asked to interpret the requirements (AGO 2014-06) and concluded the nature and scope of the services provided by the vendor determine whether the vendor is acting on behalf of the government and therefore subject to the statutory requirements.

“Look to whether a private entity has been delegated that which would otherwise be an agency responsibility in order to determine whether the private entity is acting on behalf of the public agency.”

Merely contracting with a governmental agency is not enough

Look to whether a private entity has assumed the role of the government – is acting as a surrogate for the government.

II. Public Records (continued)

Examples

A privately owned on-campus bookstore which kept university instructors' course book list forms was "acting on behalf of the public agency" and could not deny public access to the forms.

A corporation created by a county public hospital board was "acting on behalf of the public agency" and its records were subject to the Public Records Act.

II. Public Records (continued)

More examples

The Salvation Army, which had contracted with a county to provide all of the county's probation services for misdemeanants was "acting on behalf of the public agency" as it took over the county's role as the provider of probation services.

Performing professional architectural services for the construction of a school building to be built by the School Board is not a governmental function and is not "acting on behalf of a public agency."

II. Public Records (continued)

So... you are not required to have contract language in all services contracts, just services contracts where vendors are acting on behalf of your government.

Case-by-case analysis.

QUESTIONS