

Section 11.3

RIGHT OF WAY RECORDS MANAGEMENT

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Section 11.3

RIGHT OF WAY RECORDS MANAGEMENT

PURPOSE

This section establishes the requirements and procedures for maintaining right of way records including information that is exempt from inspection, examination, and duplication pursuant to **Section 119.07, Florida Statutes**.

AUTHORITY

23, Code of Federal Regulations, Part 710.201
Office of Management and Budget Circular A-87
Rule Chapter 1B-24, Florida Administrative Code
Rule Chapter 1B-26, Florida Administrative Code
Section 20.23(3)(a), Florida Statutes
Section 73.0155, Florida Statutes
Section 119.021, Florida Statutes
Section 119.07, Florida Statutes
Section 119.071, Florida Statutes
Section 119.0711, Florida Statutes
Section 257.35, 257.36 and 257.37, Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

Central and District Offices of Right of Way, Office of the General Counsel, Central and District Offices of Surveying and Mapping, and the Office of Support Services will use this section.

REFERENCES

Procedure No. 050-020-025, Records Management and Distribution
Procedure No. 050-020-026, Distribution of Exempt Public Documents Concerning
Department Structures and Security System Plans
Rule Chapter 1B-26.003, Florida Administrative Code, Electronic Record Keeping
Section 7.9, Business Damages

Section 11.4, Right of Way Project Closing
Section 73.015, Florida Statutes
Section 92.525, Florida Statutes
Section 119.011(2), Florida Statutes
Section 119.07(1), Florida Statutes
Section 119.071(5), Florida Statutes
Section 119.0711, Florida Statutes
Section 334.03(28), Florida Statutes

TRAINING

None required.

FORMS

The following forms are available on the Infonet and Internet:

<http://infonet.dot.state.fl.us/tlofp/forms.asp>
<http://www.dot.state.fl.us/rightofway/document.htm>

050-020-06, Records Retention Schedule
575-030-27, Request for Taxpayer Identification Number
575-030-35, Request for Vendor Identification Number

The following forms are available in the Right of Way Management System (RWMS):

575-090-12, Right of Way Invoice Transmittal
575-090-14, Right of Way Contract Invoice Transmittal

DEFINITIONS

Commercial Activity: An activity that provides a product or service that is available from a private source.

Custodian: The official responsible for maintaining right of way records. The Director, Office of Right of Way, is the custodian for Central Office records. The custodian for District records is the District Secretary.

Exempt Records/Information: Exempt records are records that include (1) social security numbers, (2) appraisals, agent price estimates, and other reports relating to value, offers, counteroffers, and all title information including names and addresses of

property owners whose property is subject to acquisition by purchase or through the power of eminent domain, until such time as a purchase agreement has been conditionally accepted by the Florida Department of Transportation (Department) or at the conclusion of condemnation proceedings, (3) construction plans maintained in right of way records depicting structures as defined in **Section 334.03(28), Florida Statutes**, such as bridges, causeways, approaches, toll plazas, etc., and (4) business information provided by the owner of a business as part of an offer to settle business damages if the owner requests in writing that the information be held exempt.

Legitimate Business Purposes: Legitimate business purposes for a commercial entity requesting social security numbers includes verification of the accuracy of personal information received by a commercial entity in the normal course of business and for use in civil, criminal or administrative proceeding; for insurance purposes; for use in law enforcement in the investigation of crimes; for use in identifying and preventing fraud; for use in matching, verifying or retrieving information and for research activities.

Official Parcel Files: The files containing all records pertaining to valuation, negotiation, acquisition, relocation, condemnation, and property management activities associated with each individual right of way parcel.

Official Project File: The file containing general project information that is not parcel specific.

Public Records: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material regardless of the physical form, characteristics or means of transmission made or received pursuant to law or ordinance, or in connection with the transaction of official business by any agency.

Redaction: The careful editing of a document to remove protected information such as social security numbers.

Verified Written Request: A document verified in accordance with **Section 92.525, Florida Statutes**, signed or executed by a person stating under oath or affirming that the facts or matters stated or recited in the document are true or verified by written declaration.

11.3.1 Right of Way Records Filing System

11.3.1.1 The District Office of Right of Way shall establish and maintain official project and parcel files in a manner that ensures that all records are accessible for review, inspection and/or copying upon 72 hours notice.

11.3.1.2 Information concerning electronic records can be obtained by referring to **Procedure No. 050-020-025, Records Management and Distribution** and **Rule Chapter 1B-26.003, Florida Administrative Code, Electronic Record Keeping**.

11.3.2 Retention Schedule

11.3.2.1 The following documents must be maintained permanently:

- (A) All original executed deeds, perpetual easements, and temporary easements;
- (B) Copies of Orders of Taking, Petitions, Certificates of Deposit, Final Judgments, and all other court orders pertaining to eminent domain actions, and
- (C) Title insurance policies.

11.3.2.2. All information contained in project and parcel files shall be retained for three (3) years following either the date of the final voucher to the Federal Highway Administration for projects with federal aid in Right of Way or the closing of the project as defined in **Section 11.4, Right of Way Project Closing**. Following the mandatory retention period, documents other than those identified in **Section 11.3.2.1** can be destroyed pursuant to the requirements contained in **Procedure No. 050-020-025, Records Management and Distribution**.

11.3.3 Employee/Agent Responsibilities

11.3.3.1 All exempt records/information as defined in this section shall be maintained as such by all Department employees or agents of the Department until disclosure of such information is authorized by the District Right of Way Manager or is otherwise subject to disclosure under the law.

11.3.3.2 Disclosure of exempt records/information may subject the employee or agent who discloses the exempt records/information to criminal penalties under the law. If any question arises as to whether a record may be disclosed, the Office of the General Counsel should be contacted for advice.

11.3.4 Social Security Numbers

11.3.4.1 All social security numbers held by the Department, its agents or contractors, are confidential and exempt from disclosure under **Sections 119.071(5), Florida Statutes**, except as provided for in **Sections 11.3.4.7** and **11.3.4.8** of this **Manual**.

11.3.4.2 Social security numbers shall not be collected by the Office of Right of Way except when provided as part of the records substantiating a business damage claim when provided as part of the records verifying income relating to a relocation assistance claim, or when needed for Internal Revenue Service reporting and/or for use in identifying payees as vendors in the **Florida Accounting Information Resource (FLAIR)** system. Social security numbers shall not be collected for any other purposes.

11.3.4.3 Social security numbers other than those provided as part of a business damage claim or for the purpose of verifying income relating to a relocation assistance claim, shall be collected using either **Form No. 575-030-27, Request for Tax Payer Identification Number**, or **Form No. 575-030-35, Request for Vendor Identification Number**. **Form No. 575-030-27** will be used to collect taxpayer identification numbers from persons receiving payments for real estate and real estate damages. All other taxpayer identification numbers collected to identify payees in **FLAIR** for items such as payments for business damages, fees and costs, goods or services provided as a vendor directly to the Department, relocation assistance payments to non-property owner displacees, or closing costs shall be collected using **Form No. 575-030-35**.

11.3.4.4 Prior to requesting **Form No. 575-030-35, Request for Vendor Identification Number**, the District should verify whether the payee has a current vendor identification number in **FLAIR**. If a vendor number exists, no form is required.

11.3.4.5 Social security numbers shall be included only on the following right of way forms: **Form No. 575-030-27, Request for Tax Payer Identification Number**, **Form No. 575-030-35, Request for Vendor Identification Number**, **Form No. 575-090-12, Right of Way Invoice Transmittal**, and **Form No. 575-090-14, Right of Way Contract Invoice Transmittal**.

11.3.4.6 Districts may redact social security numbers from title searches, original business records provided by a business owner, or relocation income verification records provided by a relocatee at the time such records are received in the District and maintain those records as is customary in the District.

11.3.4.7 Pursuant to **Section 119.07(1), Florida Statutes**, social security numbers contained in any document maintained in District records must be redacted prior to making the document available for inspection, examination or duplication pursuant to a public records request.

11.3.4.8 Social security numbers may be disclosed to another governmental entity or its agents, employees or contractors if disclosure is necessary for the receiving entity to perform its duties or responsibilities. Documents containing social security numbers may

also be provided to consultants under contract to the Department when those documents are necessary for the consultant to conduct the activity contracted for by the Department.

11.3.4.9 Social security numbers may be disclosed to a commercial entity engaged in the performance of a commercial activity provided the social security numbers will be used only in the normal course of business for legitimate business purposes. In order to obtain social security numbers held by the Department, a commercial entity must provide the Department a verified written request signed by an authorized officer, employee or agent of the commercial entity. The verified written request must contain the name of the commercial entity, business mailing and location addresses, business telephone numbers, a statement of the specific purposes for which the business entity needs the social security numbers, and how the social security numbers will be used in the normal course of business for legitimate business purposes. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the business entity.

11.3.4.10 All requests for social security numbers received by a District pursuant to this section must be forwarded to the Director, Office of Right of Way, in Central Office for approval prior to the District providing the requested social security numbers. The Director will notify the District within ten (10) business days after receipt of the request as to the decision to release or withhold the social security numbers. The Department must provide an annual report to the Secretary of State, the Speaker of the House and the President of the Senate, listing the names of all commercial entities who requested social security numbers during the previous year together with the entities' stated purposes for requesting social security numbers. The District requests to the Director, Office of Right of Way, for approval to release social security numbers will be the basis for the Office of Right of Way's input into this report.

11.3.5 Appraisals, Offers, and Counteroffers

Pursuant to **Section 119.0711, Florida Statutes**, all appraisals, agent price estimates and other reports relating to value, offers, and counteroffers must be maintained as exempt from public records requests under **Section 119.07(1) Florida Statutes**, until such time as a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded, at which time the exemption will expire. This does not affect the rights of fee owners and business owners or their representatives who request a copy of the appraisal report upon which the offer to the fee owner is based pursuant to **Section 73.015, Florida Statutes**, or through discovery in an eminent domain action. Appraisals, agent price estimates, and other reports relating to value, offers and counteroffers may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

11.3.6 Title Information

The Department may exempt title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain in accordance with **Section 119.0711, Florida Statutes**. Title information must be maintained as confidential under the provisions of **Section 119.07(1), Florida Statutes**, until such time as when a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded. This does not affect the rights of landowners or their representatives who request this information through discovery in an eminent domain action. Title information may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

11.3.7 Construction Plans

Any inspection, examination or duplication of construction plans maintained in right of way records except those provided pursuant to a request by a landowner or landowner's representative, business owner or business owner's representative, pursuant to **Section 73.015, Florida Statutes**, or through discovery in an eminent domain action, must comply with **Procedure No. 050-020-026, Distribution of Exempt Public Documents Concerning Department Structures**.

11.3.8 Business Records Provided to the Department

11.3.8.1 Business records as described in **Section 7.9 Business Damages**, provided to the Department as part of an offer of business damages, shall be maintained as confidential and exempt from public records requests under the provisions of **Section 119.07(1), Florida Statutes**, when the person providing such records requests in writing that the records be held confidential and exempt pursuant to **Section 73.0155, Florida Statutes**.

11.3.8.2 The Department may allow an agency as defined in **Section 119.011(2), Florida Statutes**, to inspect and copy business records/information made confidential and exempt from disclosure provided the information will be used exclusively for the transaction of official business of the receiving agency.

11.3.8.3 The Department may offer business records/information made confidential and exempt from disclosure as evidence in any legal proceeding.

HISTORY

02/20/03, 05/01/03, 09/03/04 revised due to changes in **Section 73.0155, Florida Statutes**, 05/11/06, 09/24/07, 07/28/09, Pen & Ink 7/19/13