MEMORANDUM

TO: Members of the Committee to Advocate for Persons with Impairments (CAPI)
FROM: Jeannine S. Williams, Assistant City Attorney
RE: Sunshine Law and Public Records
DATE: December 11, 2013

I. SUNSHINE LAW

A. What is the Sunshine Law?

The Sunshine Law is a reference to section 286.011, Florida Statutes. Generally, the Sunshine Law requires that all public meetings must be open to the public at all times. There are three basic requirements of the Sunshine law:

(1) all meetings of public boards or committees must be made open to the public;
(2) reasonable notice of these meetings must be given; and
(3) minutes of the meetings must be taken and made available for public inspection.

B. Who is Covered by the Sunshine Law?

The Sunshine Law applies to any board or committee of the State of Florida or any local government within the state. In addition, the law applies to all advisory boards whose powers are limited to only making recommendations. The Sunshine Law may also apply to any group that acts on behalf of a governmental entity in the performance of its public duties.

C. When is this law applicable?

All meetings are covered by the Sunshine Law. Formal meetings, whether or not a quorum is present, and any discussion or deliberations therein are covered by the law. This includes any workshops or subcommittee meetings. Additionally, informal gatherings where two or more members of the same committee are together to discuss some matter on which foreseeable action will be taken by the committee are subject to the Sunshine Law. Even if an event is a social gathering, the Sunshine Law may be violated if matters that may come before the committee are discussed by committee members.

The term “meeting” has been broadly construed. All communications between committee members are considered “meetings” if the communications involve matters which may come before the committee including:

(1) writing – if comments or responses are given (notes, memos, etc.)
(2) phone conversations
(3) electronic communications - chat rooms, social networking, websites comments, emails, etc.
(4) verbal messages by liaisons – (using staff to communicate to other members)
(5) any other type of communication
D. Consequences for Violating the Sunshine Law

The consequences for violating the Sunshine Law may carry both criminal and civil penalties. Any member of a board or committee who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. The penalty for this type of misdemeanor is up to 60 days in jail, a $500 fine, or both. Also, a committee member that is found to have violated the Sunshine Law may be removed from office. Additionally, the action of the committee which was done in violation of the Sunshine Law will be null and void.

II. PUBLIC RECORDS LAW

A. Chapter 119, Florida Statutes

Unless specifically exempted by an act of the Legislature, a public record shall be open for inspection by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. A copy shall be furnished upon payment of the fee prescribed by law or the actual costs of duplicating the record.

B. What is a "public record?"

The term includes documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, "or other material, regardless of 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." §119.011(1), Florida Statutes. The reference to "means of transmissions" has been applied to electronic media, including e-mails, faxes, and data kept in computers.

Some materials are not "public records" by definition, such as handwritten drafts (uncirculated) and notes which are not intended as final evidence of the knowledge to be recorded. Examples are notes you might make which are merely your personal tools of recollection, an uncirculated rough draft, or preliminary notes taken only personal use. However, if the notes become interoffice memos (even if stamped "preliminary draft"), or if they are prepared for filing, they will be considered public records. Private communications not related to the official business of the committee or the city – even personal e-mails in a city computer – are not public records.

C. What is an agency?

An agency is "any state, county, . . . or municipal officer, department, division, board, . . . or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency." §119.011(1), Florida Statutes. This includes publicly created advisory committees such as CAPI.

D. What is the penalty?

If the City is sued and loses on a public records question, the City may be required to pay the attorney's fees and costs incurred by the successful plaintiff. If you are sued personally and lose, however, you will probably not receive reimbursement for your own attorney’s fees and costs.

*If you have any questions or concerns about the Sunshine Law or Public Records or a particular issue relating to these laws, please do not hesitate to ask.