

# WEIDNER LAW

Consumer Justice Attorneys

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The Honorable William N. Meggs  
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Re: Alleged Violation of Florida's Government-in-the-Sunshine Law

Dear Mr. Meggs:

This letter serves as an official complaint and request for a criminal investigation of the Governor, the members of the Cabinet and staff for possible violations of Florida's Government in the Sunshine law.<sup>1</sup>

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<sup>1</sup> Section 286.011, Florida Statutes, provides as follows:

**286.011 Public meetings and records; public inspection; criminal and civil penalties.—**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and

This request is based on the statement of Gerald Bailey, former head of the Florida Department of Law Enforcement (FDLE), widely reported in the press, who indicated that “he was forced out by Scott and was told by General [Counsel] Pete Antonacci that he had the concurrence of all three Cabinet members.”

As you are well aware, the Government in the Sunshine Law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.” The statute thus applies to public collegial bodies within this state, at the local as well as state level. All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted. The Governor and Cabinet are subject to the Sunshine Law when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as FDLE.

Any conversations between and among the Governor and members of the Cabinet, directly or through conduits, regarding the replacement of the head of the FDLE violate the Government in the Sunshine Law. The Sunshine Law is applicable to meetings between a board member and an individual who is not a board member when that individual is being used as a liaison between, or to conduct a de facto meeting of board members.

Statements attributed to you in the press indicated that you won't even consider opening an investigation until you receive a criminal complaint from Mr. Bailey himself. But Mr. Bailey is not the real party in interest here. As you know, the requirements articulated within Florida's Sunshine laws provide critical protections which inure to every citizen and resident of this state. When these laws are violated, these citizens and residents are the victims of those violations. Accordingly, the real parties in interest in these instances of potential Sunshine law violations are the citizens of the State of Florida, whom you represent as State Attorney. At issue is the constitutional and statutory right of every citizen of the State of Florida to have open and noticed public meetings when official acts are to be taken or at which public business of such body is to be transacted or discussed. Under the facts before us, I respectfully assert you have a duty to initiate an investigation on behalf of the people you took an oath to serve.

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proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

Finally, if you believe your recent public comments or any other circumstances reflect an unwillingness or an inability to vigorously pursue this matter in an impartial manner, or provide a basis for a disabling conflict of interest, then please indicate that you or your office chooses to recuse itself and the Governor will, presumably, assign the matter to another State Attorney.

Thank you for your immediate attention to this matter,

Sincerely,

*Matthew Weidner*

Matthew D. Weidner

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