

Florida's Sunshine Law and Public Records for Council & Boards



Presented by:

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Legislative Affairs & Land Use Department
Office of General Counsel**

THE UPSIDE: CURRENT SUNSHINE LAWS PROMOTE MULTITASKING

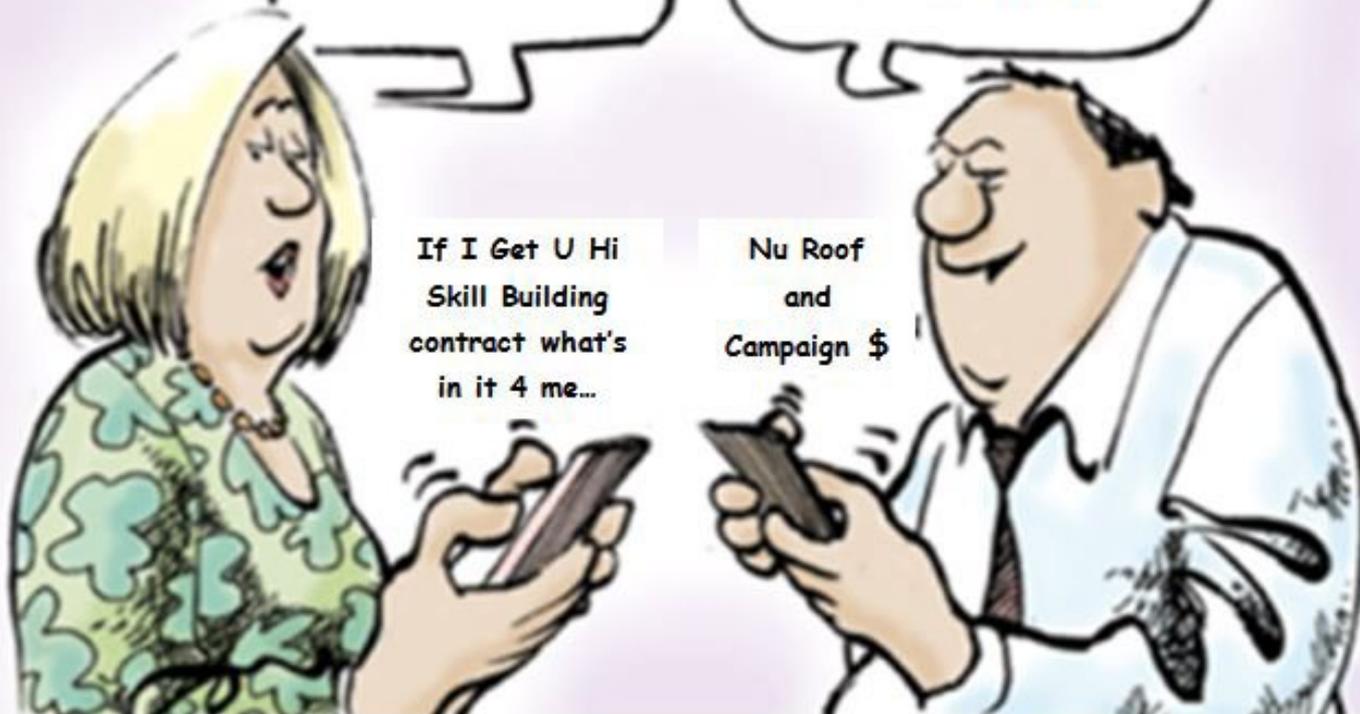
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The
Sunshine
Law
Project*

SOME GAME
LAST NIGHT,
HUH?

YEAH! HOW
'BOUT THOSE
DOLPHINS?

If I Get U Hi
Skill Building
contract what's
in it 4 me...

Nu Roof
and
Campaign \$





Florida's Sunshine Law
Section 286.011, Florida
Statutes

§286.011 - Public meetings and records; public inspection; criminal and civil penalties.

- (1) All meetings of any board or commission...of any county, municipal corporation... 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...The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting...shall be promptly recorded, and such records shall be open to public inspection....

The Law Requires:

★ These Meetings to be open and accessible to the public



★ Reasonable advance notice of the meeting



★ Written minutes of the meeting

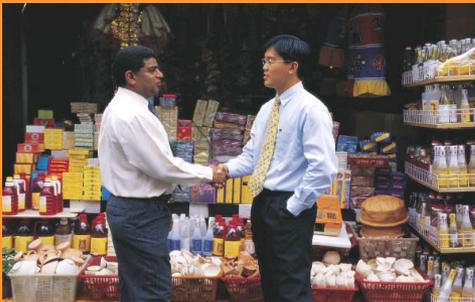
A Public Meeting Is:

- ☆ Meeting/Conversation/Discussion
- ☆ Two or more Council or Board Members
- ☆ Of the same entity
- ☆ Where a matter that is likely or foreseeably to be considered by that entity is discussed



What Meetings Are Applicable?

- ★ Full Council or Board meetings
- ★ Committee or subcommittee meetings
- ★ Casual Gatherings
- ★ Chance encounters



WHO YOU CAN MEET

WITH PRIVATELY:

- ☆ You & A Member of another Board
- ☆ You & A Staff Member
- ☆ You & A Group of Citizens
- ☆ You & Your Attorney
- ☆ You & The Mayor
- ☆ You & The Press



WHAT ABOUT LETTERS TO COUNCIL OR BOARD MEMBERS?

- ☆ Statement of Position - **OK**
- ☆ Statement of Prospective Action – **OK**
- ☆ Inviting a Response - **No-No**
- ☆ Engaging in a dialogue - **No-No**



What Else Is Applicable?



★ Telephone, E-mails, Texts, or Social Media conversations

★ Correspondence used to develop a position



★ Liaisons who develop a position

Tell-tale Signs of Potential Violations:

- ☆ “My door is always open”
- ☆ “Get with me after the meeting”
- ☆ “I respect so-and-so, who told me in the back hall - -”
- ☆ Short Notice
- ☆ Cell Phone Bills
- ☆ Lack of Minutes
- ☆ Whispering at Meetings
- ☆ Back Room Conversations

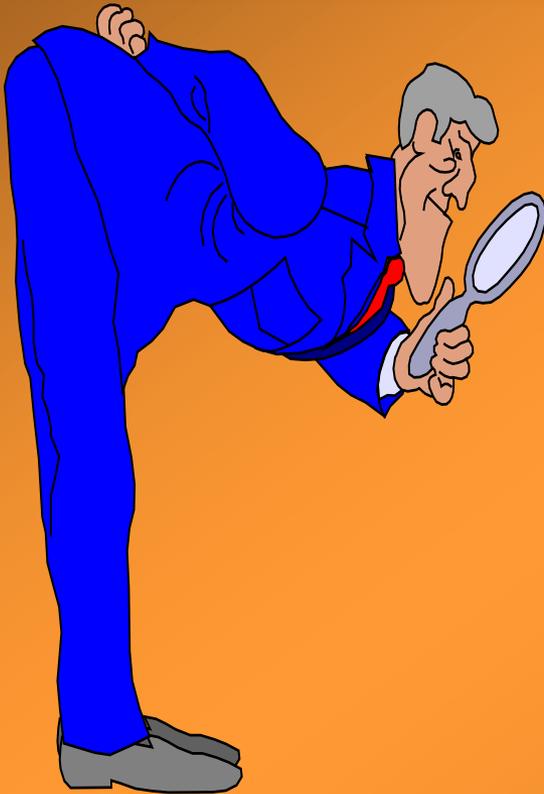


Consequences of Violation of the Law:

- ☆ Knowing violation - Up to 60 days in jail (Second degree criminal misdemeanor)
- ☆ Unintentional violation - \$500 (non-criminal penalty)
- ☆ Civil lawsuits



What will get the State Attorney or a Grand Jury involved?



- ★ Obvious violations of the law
- ★ Pushing the envelope
- ★ High profile issues

What will get a Private Party to Sue?

- ★ **Big Contract Award Matters**
- ★ **Affecting Citizens' Property or Civil Rights**
- ★ **Matters affecting Citizens' Neighborhoods**
- ★ **Matters affecting a person's job**



If it matters enough, someone will sue.

- ☆ You or your agency may have to pay attorneys' fees and costs
- ☆ You will be subpoenaed to give a statement
- ☆ There will be a public trial (lights, cameras, action!)
- ☆ Council or Board action may be invalidated



How will it be determined if:

- ☆ Your meeting was in fact open and accessible;
- ☆ Reasonable notice of the meeting was provided to the public.

HEALTH

Did panel members' Facebook chat about reservoir break Florida Sunshine law?

Tyler Treadway tyler.treadway@tcpalm.com

Published 4:09 p.m. ET May 19, 2017 | Updated 6:27 p.m. ET May 19, 2017

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Facebook conversations about a proposed Lake Okeechobee reservoir appears to violate Florida's sunshine laws because it involved three members of a South Florida Water Management District advisory board, according to the First Amendment Foundation.



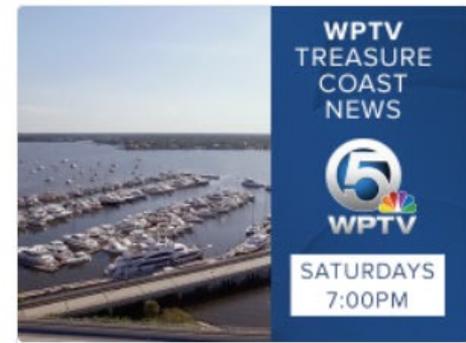
Gov. Rick Scott signed a bill to build a water storage reservoir south of Lake Okeechobee. Three members of a South Florida Water Management District advisory panel may have violated the state Sunshine Law by discussing the bill and the reservoir on Facebook. *Andrew West/news-press.com*

Former Sebastian City Council members sentenced for violating Florida's Sunshine Law, perjury

Damien Gilliams, Pamela Parris convicted in May

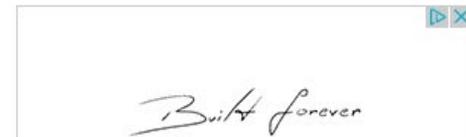


Two former Sebastian city council members, who were found guilty of violating Florida's Sunshine Law earlier this year, were sentenced Tuesday.



WPTV Treasure Coast News

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ALL THOSE IN FAVOR
OF WHAT WE DISCUSSED
IN OUR E-MAIL THREAD
AND AT LARRY'S SON'S
BIRTHDAY PARTY SAY 'AYE'

'Aye'

'Aye'

'Aye'

I

... HAVE
NO IDEA
WHAT'S
GOING ON

WINK
NUDGE

I THOUGHT
THIS MEETING
WAS OPEN?



Let the Sun shine in - it's the law!



Chapter 15, *Ordinance Code*



Jacksonville Sunshine Law Compliance Act

IF YOU GUYS SUPPORT
my proposal, then I'll
Support the monuments
of yourselves for your
district parks!!

SUNSHINE
DINER

CITY
COUNCIL

CITY
COUNCIL

SUNSHINE
DINER

SAMPLE © 2007 THE FLORIDA TIMES-UNION



Section 15.102. Applicability; Public Meeting defined.

Applies to:

- 1. Public meetings of the Council**
 - A. Meetings of the:**
 - i. Council**
 - ii. Council committees**
 - iii. Meetings between and amongst Council Members re: public business.**
- 2. These meetings are defined as "Council Public Meetings"**

Section 15.103.

Notice...; posting and timing.

a) Notices shall include:

1. The **date and time** of the meeting noticed,
2. The date and time the notices are to be posted,
3. the **location** of the meeting,
4. the general subject matter, and
5. Council Member calling the meeting
6. CMs expected to be in attendance.

Section 15.103.

Notice ... ; posting and timing.

- b) Notices Posted
 1. Website - Coj.net;
 2. City Hall where public meetings are noticed, and by such other methods as may be appropriate or required by particular circumstances; and
 3. Other places based on circumstances
- c) Minimum twenty-four (24) hours prior to the meeting
- d) In the event of an emergency, approved in writing by Council President and the City's Ethics Officer less than 24 hours.
- e) Copy of the notices kept by Legislative Services
- f) Director / Council Secretary implement standardized policy and procedures

Section 15.104. Public Meetings location.

a) Places

1. open to the public,
2. reasonable, and
3. convenient access to the public.

b) Locations include:

1. Council Chambers
2. Public conference, meeting, or
3. Committee rooms.

***Public meetings shall not be held in the individual offices of Council Members, except in the event of exigent circumstances.**

- (c) [and any other] **Public location** unless other locations are approved by the City Ethics officer or OGC Council Ethics liaison in writing.

**Section 15.105.
Public Meeting; commencement and
adjournment. (Gavel to Gavel)**

The business and conversations conducted during a noticed Council Public Meeting shall commence upon the chair's or Council Member's opening of the meeting and shall conclude upon adjournment. The mere fact that a meeting has been noticed, does not authorize action or discussions prior to the opening of the meeting or following its adjournment.

Section 15.106. Public Meetings minutes.

- a) Council Member who noticed the meeting is responsible for the minutes of that meeting.
- b) Minutes shall reflect, at a minimum:
 1. The location, date and time the meeting commenced and adjourned;
 2. The members of the Council and other public officials and employees in attendance;
 3. The substance of the discussions and positions presented by the persons in attendance.
- c) Minutes shall be kept with notice

Section 15.107.

Biannual review and report on Council.

a) Inspector General's Office shall review regarding:

1. The notices of public meetings
2. The location of such public meetings
3. Written minutes

The Inspector General shall file such report.

b) The report shall include confirmation, through methods and means developed by the Inspector General

Section 15.108.

Annual training continuing education and training on Sunshine Law.

- a) Council Member shall receive annual training on Government in the Sunshine.
- b) Executive Council Assistants - training with Council Member plus additional training.

Section 15.109. Recommendations for improved compliance.

As part of the biannual review, the Director/Council Secretary, the City Ethics Director, and the Office of General Counsel, may make recommendations for improvements to Chapter 15 to the City Council.

Chapter 119, *Florida Statutes*



Public Record Laws

What is a Public Record?

- ☆ Florida Statutes §119.011(12) defines “public records” as:

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.

- ☆ EVERY document connected to public business is to be preserved and made available upon request for inspection and copying.



Examples of Public Records

- ★ Personal Laptop/Phone
- ★ E-mails
- ★ Text Messages
- ★ Social Media
- ★ Handwritten Notes

Retention Schedule

☆ Public Records Subject to Retention Schedules created by the Division of Library and Information Services of the Department of State:

257.36 Records and information management.-

* * *

- (6) A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division shall adopt reasonable rules not inconsistent with this chapter which shall be binding on all agencies relating to the destruction and disposition of records. Such rules shall provide, but not be limited to:
- (a) Procedures for complying and submitting to the division records-retention schedules.
 - (b) Procedures for the physical destruction or other disposal of records.
 - (c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

Retention Schedule

The Retention Schedule for each public record is not based upon the type of communication (e-mail, text, social media), but is determined based on their legal, fiscal, administrative and historical values, regardless of the form in which they reside or the method by which they are transmitted.

*See General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at <http://dos.myflorida.com/library-archives>

City Council Common Public Records Categories

Category/Type of Public Record	Item No. in GS-1-SL Schedule	Description Summary	Retention Schedule
Administrative Correspondence & Memoranda	17	General correspondence and memoranda associated with routine administrative practices or office activities. These do include memos or correspondence that creates policy or procedure.	3 fiscal years
Information Request Records	23	Correspondence and supporting documentation in answering inquiries from the public. Includes public records requests, telephone lists, meeting dates and locations	1 fiscal year
Legislation Records	119	Development or review of proposed legislation. Research materials on the legislation, staff analysis, and statistical studies, input from affected persons.	Retain until obsolete, superseded, or administrative value is lost
Travel Records	52	Copies of travel vouchers, receipts, and related records on actual cost of lodging and meal allowances and other expenses.	5 fiscal years
Postage/shipping records	133	Reports showing amount of postage used, dates used, unused balance and purpose.	3 fiscal years
Equipment/ Vehicle Usage Records	224	Use of agency equipment and vehicles, including driver, destination, fuel/service stops and total trip mileage.	1 calendar year
Operational and Statistical Report Records	124	Narrative and statistical reports of office operations made within and between departments whether periodic or on an ad-hoc basis. Not official annual reports.	Retain until obsolete, superseded, or administrative value is lost
Annual reports submitted to City Council	380	Annual reports required to be submitted by a county officer to Council related to expenses or compensations in fees	5 fiscal years
Internal Audits	73	Issued by Council Auditor's Office	5 fiscal years after audit report release date

Consequences of Violation of the Law:

- ☆ Knowing violation - Up to 1 year in jail (first degree criminal misdemeanor) and subject to suspension and removal or impeachment
- ☆ Unintentional violation - \$500 (non-criminal penalty)
- ☆ Civil lawsuits



The Florida Times-Union
jacksonville.com

Fernandina Observer
NEWS AND OPINION

COUNTY NEWS
Judge Daniel finds in Rayonier's favor - BOCC

“Circuit Judge James H. Daniel granted summary judgment Aug. 24 to Rayonier after finding the county did not give Rayonier 147 pages of text messages exchanged by county commissioners and county employees”

Rayonier prevailed, saying it shows the county tried to conduct government business "in the shadows."
Author: Florida Times-Union, David Bauerlein
Published: 11:48 AM EDT September 5, 2021
Updated: 11:48 AM EDT September 5, 2021



NASSAU COUNTY, Fla. — Nassau County...
when they...

Nassau's county attorney resigns after State Attorney's Office findings that he 'committed criminal acts'



Dan Scanlan
Florida Times-Union

Published 4:30 p.m. ET March 15, 2022 | Updated 2:56 p.m. ET March 16, 2022

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Nassau County Attorney Michael Mullin has agreed to officially resign after a State Attorney's Office investigation strongly suggests he "committed criminal acts" by deleting text messages sought by a developer in a long-running battle over the Wildlight residential development.

Wildlight is part of the 23,600-acre East Nassau Stewardship District under development by Rayonier, and Mullin represented the developer as a private-sector attorney from 2007 to 2015 when he became county attorney.

In a letter to Nassau County commissioners, Mullin officially



Mullin, Nassau County

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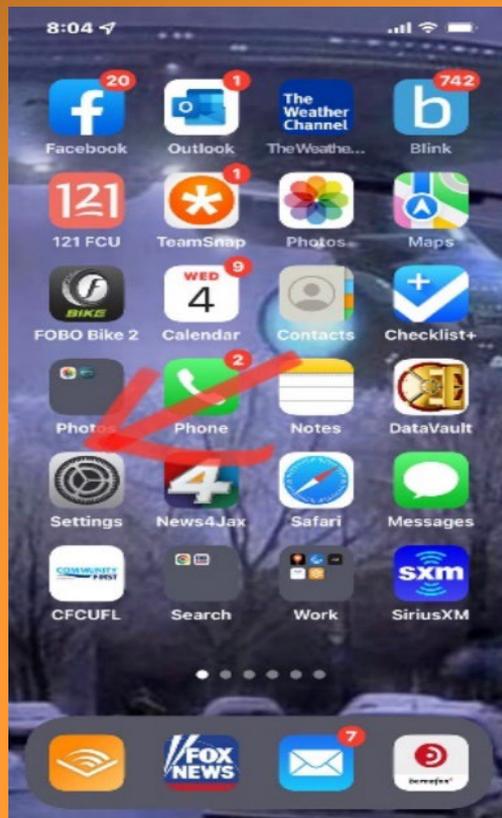
High school softball: Keystone Heights brings energy to FHSAA regional...

Text Messages

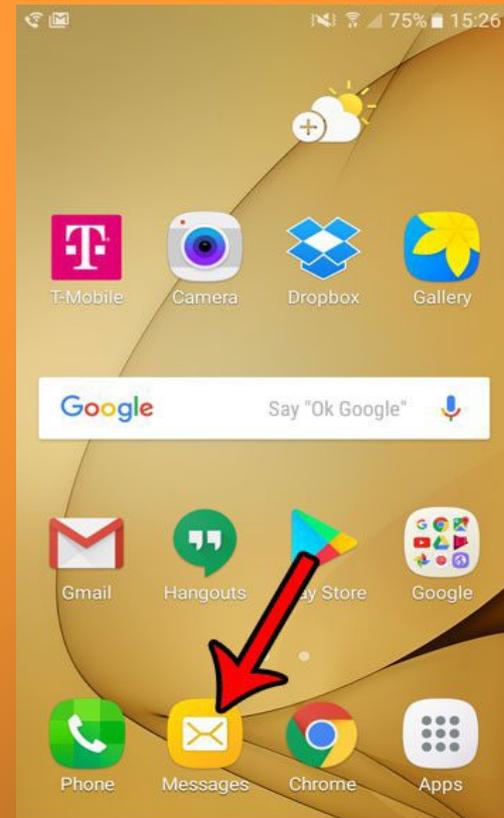
- ☆ **Take out your phone, let's check the settings**
- ☆ **Ensure Cell Phone Settings are set to retain text messages**
- ☆ **Automatically deleting messages is prohibited under Florida's Public Records laws**

Text Messages: *Go to Settings*

iPhone

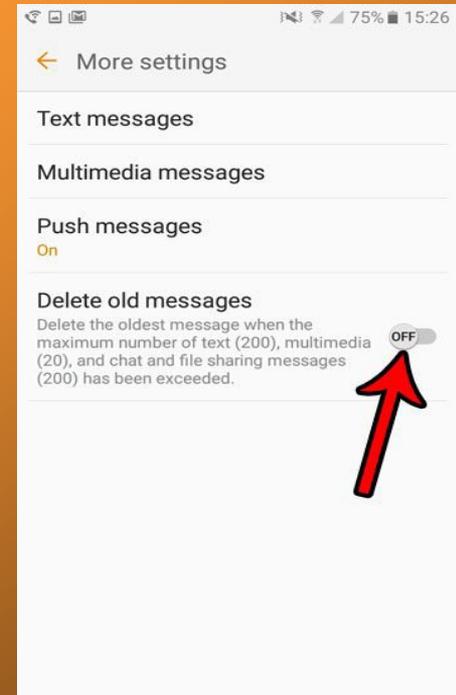
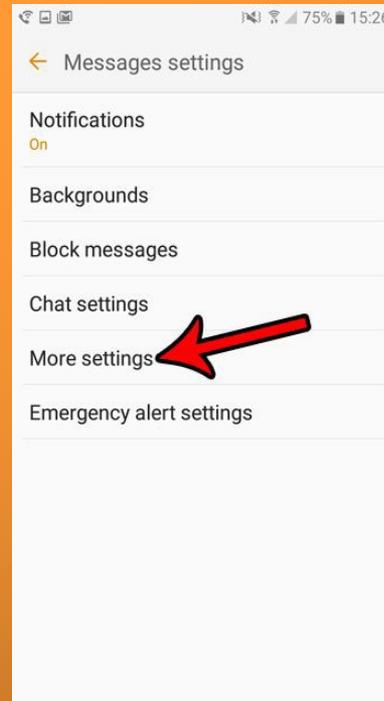
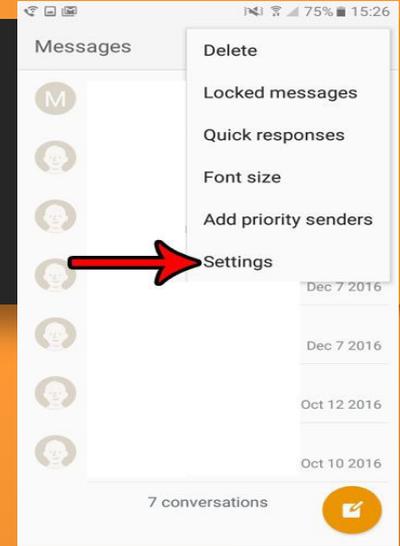
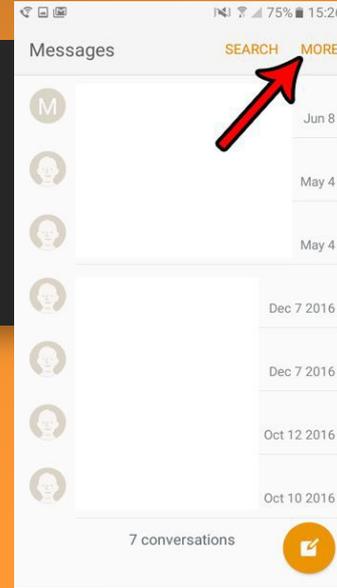
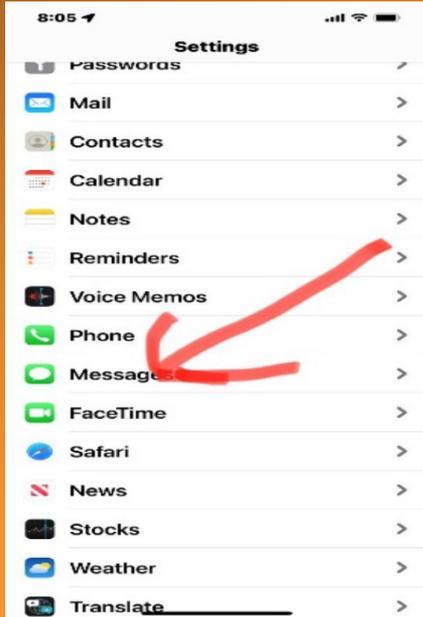


Android



Text Messages: *Go to Settings*

iPhone





Government in the Sunshine