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## Explaining Florida Man

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# EXPLAINING FLORIDA MAN

IRA P. ROBBINS\*

## ABSTRACT

*“Florida Man” is a popular cultural phenomenon in which journalists report on Floridians’ unusual (and often criminal) behavior, and readers relish in and share the stories, largely on social media. A meme based on Florida Man news stories emerged in 2013 and continues to capture people’s attention nationwide. Florida Man is one of the latest unique trends to come from the Sunshine State and contributes to Florida’s reputation as a quirky place.*

*Explanations for Florida Man center on Florida’s Public Records Law, which is known as one of the most expansive open records laws in the country. All states and the District of Columbia have open records laws that establish procedures for individuals to obtain access to public records in the spirit of government transparency. Because many Florida Man stories are based on arrest records and incident reports and incorporate mugshots, those who have written about Florida Man claim that the Florida Public Records Law, which allows reporters to access those records, is behind the trend.*

*The problem with this theory is that it incorrectly implies that Florida’s Public Records Law offers journalists advantages in writing stories that other states’ laws do not. Despite the broad grant of access to police documents that Florida’s open records law provides, other states’ open records laws similarly provide the public with access to arrest records, incident reports, and, although to a lesser extent, mugshots. Other provisions of Florida’s Public Records Law that contribute to the ease of access to Florida’s public records compared with other states’ equivalent laws are largely irrelevant to Florida Man’s existence. Even coupled with the characteristics of Florida and its residents that many people claim are unique, the open records law-based theory for Florida Man’s existence falls short of explaining the phenomenon.*

*This Article posits that the primary reasons for Florida Man’s popularity are preexisting popular culture trends and the venue in which Florida Man rose to fame: the internet. Internet platforms allow a wide audience—which may already have been receptive to jokes about Florida due to its reputation for being a newsworthy state—to easily consume, share, and re-share Florida Man content, inspiring journalists to continue to write Florida Man stories. This cycle of generation and*

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consumption of Florida Man stories has allowed Florida Man to become one of the longest-living memes in internet history. While the Florida Public Records Law and characteristics of Florida and its people work together to provide raw material for Florida Man articles, the heretofore unmentioned popular culture and internet trend factors of the phenomenon complete the story behind Florida Man's existence.

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*"Florida Man Accused of Forcing Small Alligator to Drink Beer"*<sup>1</sup>

*"Florida Man Sexually Assaults Two Stuffed Animals Inside a Target Store"*<sup>2</sup>

*"Florida Man Threatened to Kill with 'Kindness,' His Machete"*<sup>3</sup>

*"Florida Woman Accused of Zipping Boyfriend in Suitcase, Leaving Him to Die"*<sup>4</sup>

*"Florida Man on Drugs Kills Imaginary Friend and Turns Himself In"*<sup>5</sup>

## INTRODUCTION

In March 2019, Google saw an uptick in a particular search: a date followed by the words "Florida Man."<sup>6</sup> Word had spread that by searching for one's birthdate and the term "Florida Man," the internet would generate headlines from that date about Floridians.<sup>7</sup> The search became known as the "Florida Man Challenge";<sup>8</sup> like many viral internet trends, the challenge was fairly short-lived.<sup>9</sup>

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1. *Florida Man Accused of Forcing Small Alligator to Drink Beer*, AP NEWS (Oct. 10, 2019), <https://apnews.com/1ac8f7b20864411d90223872709f3551> [<https://perma.cc/V4NZ-ZDPX>].

2. Brian Niemietz, *Florida Man Sexually Assaults Two Stuffed Animals Inside a Target Store*, N.Y. DAILY NEWS (Oct. 23, 2019, 5:42 PM), <https://www.nydailynews.com/news/crime/ny-florida-man-rapes-stuffed-animal-target-20191023-3dnplh5nfvf3rpjynm6htc4wje-story.html> [<https://perma.cc/KJL3-SYKY>].

3. *Florida Man Threatened to Kill with "Kindness," His Machete: Report*, NBC SO. FLA. (Jan. 14, 2019), <https://www.nbcmiami.com/news/local/florida-man-threatened-to-kill-with-kindness-his-machete-report/380/> [<https://perma.cc/S2PB-CKTU>].

4. Ben Kessler, *Florida Woman Accused of Zipping Boyfriend in Suitcase, Leaving Him to Die*, NBC NEWS (Feb. 26, 2020, 8:10 AM), <https://www.nbcnews.com/news/florida-woman-accused-zipping-boyfriend-suitcase-leaving-him-die-n1143356> [<https://perma.cc/8XFT-UN64>].

5. Mia McLaughlin, *58 of the Best Florida Man Headlines You Have to Read to Believe*, ODYSSEY (Apr. 30, 2019), <https://www.theodysseyonline.com/florida-man-stories> [<https://perma.cc/JC3V-NE6B>].

6. See *Florida Man*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=today%205-y&geo=US&q=%2Fm%2F012fdp2r> (last visited Dec. 1, 2021); Brett Molina & Grace Pateras, *This Is Why Everyone Is Googling "Florida Man" and Their Birthday*, USA TODAY (Mar. 21, 2019, 3:02 PM), <https://www.usatoday.com/story/news/nation/2019/03/21/florida-man-birthday-why-google-search-challenge-has-gone-viral/3235270002/> [<https://perma.cc/R94N-VNUU>].

7. Molina & Pateras, *supra* note 6; see Gabrielle Calise, *Florida Man Challenge: Which Ridiculous Headline Matches Your Birthday*, TAMPA BAY TIMES (Mar. 21, 2019), <https://www.tampabay.com/florida/2019/03/21/florida-man-challenge-which-ridiculous-headline-matches-your-birthday/> [<https://perma.cc/3C4U-U6M4>] (explaining the process for searching for "your Florida Man horoscope").

8. Molina & Pateras, *supra* note 6.

9. See GOOGLE TRENDS, *supra* note 6; see generally Lauren Michele Jackson, *A Unified Theory of Meme Death*, ATLANTIC (Dec. 7, 2017), <https://www.theatlantic.com/technology/archive/2017/12/a-unified-theory-of-meme-death/546866/> [<https://perma.cc/FGC5-76DZ>] (discussing the reasons that some memes and internet sensations have shorter lives than others).

While the “Florida Man Challenge” garnered attention for a few weeks in early 2019, the Florida Man meme<sup>10</sup> that inspired it was born in 2013<sup>11</sup> and lives on today through the entertaining stories that journalists continue to write.<sup>12</sup> For years, the Florida Man meme has had its own Twitter account<sup>13</sup> and subreddit.<sup>14</sup> In 2016, Shawn Garner published an anthology of Florida Man articles.<sup>15</sup> The widespread interest in Florida Man inspired a scoring system to determine just how Florida Man-esque a news story is.<sup>16</sup> The “Florida Man” term has become so ubiquitous that with President Donald Trump’s announcement in 2019 that he planned to change his domicile from

10. A meme is “an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online[,] especially through social media.” *Meme*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/meme> [<https://perma.cc/NX2W-8T85>].

11. See Logan Hill, *Is It Okay to Laugh at Florida Man?*, WASH. POST MAG. (July 15, 2019), <https://www.washingtonpost.com/news/magazine/wp/2019/07/15/feature/is-it-okay-to-laugh-at-florida-man-2/> [<https://perma.cc/4NBU-CS6S>] (noting that the Florida Man meme became popular in 2013 when the @\_FloridaMan Twitter account began).

12. See, e.g., Associated Press, *Florida Man Jailed Twice in 2 Days for Impersonating Cop*, U.S. NEWS (Mar. 18, 2020, 10:21 AM), <https://www.usnews.com/news/best-states/florida/articles/2020-03-18/florida-man-jailed-twice-in-2-days-for-impersonating-cop>; Associated Press, *Florida Man Mistakenly Pumps Gas onto the Deck of His Boat*, WPTV (Jan. 30, 2020, 3:13 PM), <https://www.wptv.com/news/state/florida-man-mistakenly-pumps-gas-onto-the-deck-of-his-boat> [<https://perma.cc/AYA9-LUJX>]; Aila Slisco, *Florida Man Woken up by Man Who Broke into House and Began Sucking His Toes*, NEWSWEEK (Jan. 3, 2020, 11:45 PM), <https://www.newsweek.com/florida-man-woken-man-who-broke-house-began-sucking-his-toes-1480384> [<https://perma.cc/6RY8-YXXY>]; Joseph Wilkenson, *Florida Man Arrested, Charged with Stealing 66 Rolls of Toilet Paper from Hotel*, DAILY NEWS (Mar. 21, 2020, 7:19 PM), <https://www.nydailynews.com/news/national/ny-florida-man-arrested-stealing-toilet-paper-from-hotel-20200321-rjgkqz3fvcghf4w7denzsi-story.html> [<https://perma.cc/4ZZ6-N25L>]. Although many Florida Man stories are entertaining, some of the stories address more serious matters. See, e.g., Jon Jankowski, *Florida Man Faces Charges After Coughing on Store Employee, Deputies Say*, CLICKORLANDO.COM (Apr. 9, 2020, 1:44 PM) (reporting on a man who was arrested for intentionally coughing on another person during the 2020 coronavirus pandemic); Phil McCausland, *Florida Man Encases Arms in Concrete in Protest of Prison Conditions During Pandemic*, NBC NEWS (Apr. 18, 2020, 11:13 AM), [https://www.nbcnews.com/news/us-news/florida-man-encases-arms-concrete-protest-prison-conditions-during-pademic-n1186886?cid=sm\\_npd\\_nn\\_tw\\_ma](https://www.nbcnews.com/news/us-news/florida-man-encases-arms-concrete-protest-prison-conditions-during-pademic-n1186886?cid=sm_npd_nn_tw_ma) [<https://perma.cc/96NK-V4AD>]; see also Hill, *supra* note 11 (focusing on the insensitive nature of some Florida Man stories that make light of homelessness, mental illness, and drug addiction).

13. See Florida Man @\_FloridaMan, TWITTER, [https://twitter.com/\\_floridaman?lang=en](https://twitter.com/_floridaman?lang=en) [<https://perma.cc/GBL5-B9XB>]. The page states that the account is now “retired.” While the account no longer features new Florida Man articles, previous tweets are still viewable.

14. See Florida Man r/FloridaMan [<https://perma.cc/6VLQ-WTH7>], REDDIT, <https://www.reddit.com/r/FloridaMan/>. Reddit is the host website for over 130,000 forums (or sub-Reddits) dedicated to specific topics, where users around the world can read and post information; see generally About, REDDIT, <https://www.redditinc.com/> [<https://perma.cc/3XFE-PHM2>].

15. See SHAWN D. GARNER, FLORIDA MAN: A COLLECTION OF HILARIOUSLY TRUE, UNBELIEVABLE HEADLINES THAT COULD ONLY HAPPEN IN FLORIDA (2016).

16. Howard Cohen, *Florida Is Just Full of Weirdos.” Team Picks the Wackiest Florida Man Story of All*, MIA. HERALD (Mar. 1, 2019, 2:10 PM), <https://www.miamiherald.com/news/state/florida/article226934959.html> (describing the “F.L.O.R.I.D.A. Methodology,” which assigns points to a news headline based on whether it contains “Firearms (or other weapons), Locations, Objects, Reasons for Arrest, Injuries, Drugs and alcohol, and Animals” to determine the headline’s overall “Florida Man-ness”).

New York to Florida, the media began applying the title to him.<sup>17</sup> If one stops to reflect on the “laugh-out-loud headline[s],” “petty (although occasionally serious) crime,” alligators, intoxicants, and other common features of Florida Man stories,<sup>18</sup> two questions emerge: Why is everyone so obsessed with Florida Man? And why did Florida Man become popular in the first place?

There are several hypotheses for Florida Man’s popularity. One theory attributes Florida Man’s existence to the characteristics unique to Florida and its residents.<sup>19</sup> Proponents of this idea posit that Florida Man pervades the internet because of the crime, geography, and other characteristics that are believed to be unique to the state.<sup>20</sup> A more common theory suggests that Florida’s Public Records Law<sup>21</sup> explains the phenomenon.<sup>22</sup> Public records are frequently a source for Florida Man stories,<sup>23</sup> and many have suggested that Florida Man stories are so prevalent because Florida’s open records law allows the media to access those records more easily than elsewhere in the United States.<sup>24</sup>

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17. See Daniel Figueroa IV, *Donald Trump Headlines Become Florida Man Headlines with “Daily Show” Browser Add-on*; TAMPA BAY TIMES (Nov. 5, 2019), <https://www.tampa-bay.com/news/nation-world/2019/11/05/donald-trump-headlines-become-florida-man-headlines-with-daily-show-browser-add-on/> (explaining *Daily Show* host Trevor Noah’s announcement during a November 2019 broadcast about a new extension for search engines “that replaces the name [ ]Donald Trump[ ] with the phrase, ‘Florida man’ in any headline or anytime it appears while the extension is activated”); Elliot Hannon, *Donald Trump Is Officially a Florida Man*, SLATE (Nov. 1, 2019, 6:43 AM), <https://slate.com/news-and-politics/2019/11/donald-trump-is-officially-florida-man.html> [<https://perma.cc/TL7M-5SGY>] (reporting on Trump’s decision to make his “Florida Man at heart” status official by “mov[ing] his primary residence from New York to the absurd state of Florida”).

18. Cohen, *supra* note 16.

19. See, e.g., Joel Shannon, *Googling Florida Man for the Viral Birthday Challenge? Why There Are So Many Wild Crime Stories*, USA TODAY (Mar. 22, 2019, 12:40 AM), <https://www.usatoday.com/story/news/nation/2019/03/21/florida-man-challenge-why-do-so-many-crazy-crimes-happen-florida/3240636002/> [<https://perma.cc/4UDQ-D26E>] (“[T]he culture of the state can’t be discounted [as an explanation for the Florida Man phenomenon] . . . . You’ll hear descriptions of Florida ranging from ‘diverse’ to ‘crazy’—few would describe it as a boring place.”).

20. See, e.g., Emily Greenhouse, *Twitter’s “Florida Man,”* NEW YORKER (June 11, 2013), <https://www.newyorker.com/culture/culture-desk/twitters-florida-man> [<https://perma.cc/4KQ9-NLLV>] (highlighting various aspects of Florida that make the state unique, including “privatization, deregulation, severely high rates of AIDS and homicide, fraud, pervasive artificiality, white-collar corruption in the medical-services industry, a swamp without natives, and Rick Scott”).

21. FLA. STAT. ANN. §§ 119.01-.15 (2020).

22. See, e.g., Shannon, *supra* note 19 (summarizing the theory that Florida’s “general approach toward government records” streamlines the process by which the media gains access to information about suspects in local crimes).

23. Bob Norman, *Who is Florida Man?*, COLUM. JOURNALISM REV. (May 30, 2019), [https://www.cjr.org/business\\_of\\_news/florida-man-news.php](https://www.cjr.org/business_of_news/florida-man-news.php) [<https://perma.cc/MUW7-ANFA>] (stating that “almost all Florida Man stories . . . [are] drawn entirely from [the subject’s] arrest report[s]”).

24. See, e.g., Richard J. Cole III, *Middle District of Florida Man: Where the Bizarre Florida Memes Come from and More Fun Under the Sunshine Laws*, FED. LAW., July/Aug.

This Article argues that while some features of Florida's Public Records Law have influenced the Florida Man phenomenon, and many other features contribute to the law's relative strength compared with open records laws in other states, Florida Man's inception and existence is more directly the result of popular culture and internet usage. When Florida Man emerged, many people already considered Florida to be a unique state—whether due to real differences between residents of Florida and other states or the perceived peculiarity of Florida due to the state's role in national events such as the 2000 presidential election. This existing reputation gave Florida Man a receptive audience that internet culture, including memes—rather than the more commonly cited Florida Public Records Law—dramatically expanded.

Part I of this Article describes the Florida Man phenomenon: who the various Florida men (and women) are, their behavior, and Florida Man's emergence to national fame. Part I also provides background on open records laws throughout the United States, with a focus on Florida's law. Next, Part II argues that Florida's Public Records Law is just one—and, contrary to others' explanations for the meme, not the most significant—driver of Florida Man. Part II compares states' open records laws to determine which factors are most likely to influence Florida Man's existence. Further, Part II identifies the limitations of the legal explanation for Florida Man. Florida's Public Records Law is more robust than other states' laws, but the aspects that make it so do not substantially contribute to journalists' ability to access the records used for Florida Man stories. While journalists would not have access to these records without the open records law, it is other factors—internet culture, including the use of memes, and at least to some extent, the people and things in Florida itself—that make Florida Man so memorable and cement his place in the pop culture zeitgeist.

## I. BACKGROUND

Regardless of any causal relationship between Florida Man and Florida's open records law, it is clear that they are just two of Florida's unique features. This Part examines Florida's reputation as a whole, Florida Man, and open records laws—with an emphasis on Florida's Public Records Law. In doing so, this Part provides context for analyzing the degree to which the Public Records Law and other characteristics may affect the Florida Man phenomenon.

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2019, at 8 (suggesting that “Florida’s unique laws enable journalists to cover Floridians in ways that just aren’t possible elsewhere”); Norman, *supra* note 23 (noting that Florida has “strong public records laws that make obtaining mugshots and arrest reports easier than in many other states (including California and New York, which aren’t known for their lack of eccentricity, either)”; Shannon, *supra* note 19 (“In Florida, there are few barriers that would keep a reporter from writing a ‘Florida man’ story . . . . That’s not the case in all states.”)).

### A. Florida: “America’s Class Clown”<sup>25</sup>

Prior to Florida Man, Florida had a reputation as an offbeat place. Reporters have found a common interest in writing about the state and its idiosyncrasies.<sup>26</sup> This Section examines characteristics of Florida that are cited as drivers of Florida Man, as well as characteristics that distinguish Florida from its neighboring states, to aid in the analysis of the most likely contributors to the Florida Man phenomenon.

Florida, occupying the southeastern corner of the mainland United States, is the third most populous of the fifty states.<sup>27</sup> Florida’s large population is culturally diverse: its population is 23.4% Hispanic and 16.1% black,<sup>28</sup> and as of 2018, more than one in five residents was an immigrant.<sup>29</sup> The state is home to an abundance of biodiversity,<sup>30</sup> including an alligator population that comprises 1.3 million<sup>31</sup> of the five million alligators in the United States.<sup>32</sup>

In addition to its large population, Florida hosts millions of tourists every year.<sup>33</sup> In 2018, Florida set its eighth-consecutive record for the

25. See Jon Silman, *Why America Is So Obsessed with Florida*, VICE (July 4, 2016, 12:00 AM), <https://www.vice.com/en/article/7bmp8a/weird-florida-news-america-florida-man> [<https://perma.cc/H2L4-JUXR>].

26. See, e.g., R.T. Brant, *Florida Isn’t “Weird,” It’s a Microcosm of America*, BUSTLE (Dec. 27, 2018), <https://www.bustle.com/p/florida-isnt-weird-its-a-microcosm-of-america-11465223> [<https://perma.cc/5W7N-NU2H>] (summarizing observations many have made about unique attributes of Florida); Billy Manes, *Our Dumb State*, ORLANDO WKLY. (Feb. 3, 2010), <https://www.orlandoweekly.com/orlando/our-dumb-state/Content?oid=2256003> [<https://perma.cc/X6FW-RA9E>] (reintroducing *Orlando Weekly*’s “wildly popular, semi-regular compendium of the Sunshine State’s nonsense” and inviting readers to “[t]ake a step back [] and enjoy the latest batch of anthropological (or at least political) anomalies that have forever—and will forever—define [Florida’s] landscape”).

27. Ellen Kershner, *The 50 US States Ranked by Population*, WORLDDATLAS (June 12, 2020), <https://www.worldatlas.com/articles/us-states-by-population.html> [<https://perma.cc/7USM-ZWH4>] (compiling July 2019 U.S. Census Bureau data).

28. *Race and Ethnicity in Florida*, STAT. ATLAS, <https://statisticalatlas.com/state/Florida/Race-and-Ethnicity> [<https://perma.cc/5DWT-8AAC>].

29. *Immigrants in Florida*, AM. IMMIGR. COUNCIL (Aug. 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-florida>.

30. See Zenaida Kotala, *Florida Declared a Global Biodiversity Hotspot*, UCF TODAY (Feb. 26, 2016), <https://www.ucf.edu/news/florida-declared-a-global-biodiversity-hotspot/> [<https://perma.cc/5KPK-D5L7>].

31. *15 of the Most Unusual Places Alligators Have Been Found*, MENTAL FLOSS, <https://www.mentalfloss.com/article/79799/15-most-unusual-places-alligators-have-been-found> [<https://perma.cc/U5ZF-YF6T>].

32. Mary L. Beach, *American Crocodile and Alligator*, DEFS. OF WILDLIFE, <https://defenders.org/wildlife/american-crocodile-and-alligator> [<https://perma.cc/RS9D-3HC5>] (last visited Dec. 1, 2021).

33. *Florida*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-states/florida> [<https://perma.cc/RAX9-5K7M>].



number of tourists visiting the state that year, at 126.1 million.<sup>34</sup> Visitors go to Florida for its theme parks,<sup>35</sup> golf courses,<sup>36</sup> and beaches,<sup>37</sup> among other things.<sup>38</sup> The state's warm weather allows for year-round enjoyment of these attractions<sup>39</sup>—aside from the significant interruptions that Florida's extreme weather events, especially hurricanes, can pose.<sup>40</sup>

Florida's warm and activity-dense environment also attracts a large retirement-aged population. Florida has the highest population of residents over age sixty-five of all fifty states and the District of Columbia.<sup>41</sup> Florida also has a below-average labor participation rate compared with the rest of the country.<sup>42</sup>

Florida's large and diverse population means that the state has considerable political relevance.<sup>43</sup> Because Florida's demographics are considered representative of the nation's demographics as a whole, Florida is the state to watch for in national political opinion polls.<sup>44</sup> Florida's results in the general election have correctly predicted the

34. *Record 126.1 Million Tourists for Florida in 2018*, U.S. NEWS & WORLD REP. (Feb. 21, 2019, 5:13 AM), <https://www.usnews.com/news/best-states/florida/articles/2019-02-21/record-1261-million-tourists-for-florida-in-2018>.

35. *Research FAQ*, VISIT FLA., <https://www.visitflorida.org/resources/research/research-faq/> [<https://perma.cc/CX74-EZ5V>].

36. *Cf.* Joe Passov, *The United States of Golf: All 50 States Ranked by Their Golfiness*, GOLF (June 29, 2015), <https://www.golf.com/golf-gold/united-states-golf-every-state-union-ranked-its-golfiness> [<https://perma.cc/4KS3-YJBM>] (stating that Florida is a golf-friendly environment because it has “more courses (1,042) than any other state” and “superb weather nearly year-round”).

37. *Research FAQ*, *supra* note 35.

38. *See id.* (listing culinary and dining experiences, visiting friends and relatives, shopping, and sightseeing as among the most popular activities of visitors to Florida in 2019).

39. *See Florida*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/florida/united-states/3179> [<https://perma.cc/B9DF-AD6F>].

40. David Fleshler, *Hurricane Season Will Soon Enter Peak Period: Latest Forecast Released*, S. FLA. SUN-SENTINEL (Aug. 5, 2019, 12:30 PM), <https://www.sun-sentinel.com/news/weather/hurricane/fl-ne-hurricane-peak-season-20190805-i6gqh2i4pjcm3p54qs4w65t7ma-story.html>

(discussing Florida's hurricane season, which runs from June 1 through Nov. 30 each year).

41. Lauren Kent, *Where Do the Oldest Americans Live?*, PEW RES. CTR. (July 9, 2015), <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> [<https://perma.cc/UWN5-72JG>] (stating that 19.1% of Floridians are sixty-five or older).

42. *Employment Rankings*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-states/rankings/economy/employment> [<https://perma.cc/8KER-CBQK>] (ranking Florida at number thirty-one based on labor participation rates across the fifty states and the District of Columbia, with one being the highest rate).

43. *See* Martin Savidge, *Florida: The Swingiest Swing State*, CNN (Aug. 9, 2016, 3:58 PM), <https://www.cnn.com/2016/08/09/politics/election-2016-donald-trump-hillary-clinton-florida/index.html> [<https://perma.cc/2GFH-HANT>] (explaining that Florida's twenty-nine electoral votes make it “the biggest prize” of any “battleground state[]” in a national election).

44. Susan A. MacManus, *This Is How Florida Became the State to Watch in Presidential Politics*, TAMPA BAY TIMES (June 10, 2016), <https://www.tampabay.com/news/perspective/this-is-how-florida-became-the-state-to-watch-in-presidential-politics/2281151/> [<https://perma.cc/W65D-E73S>].

winning candidate in all but two presidential elections between 1928 and 2016.<sup>45</sup> Florida's particularly significant role in the 2000 Bush versus Gore presidential election<sup>46</sup> pushed Florida into the national spotlight—and not necessarily in a positive light. As *New York Times* best-selling humorist Dave Barry has explained, the “election recount debacle [was the moment] when Florida really became the butt of national jokes and obsession,” beginning its decades-long “trending” status.<sup>47</sup>

Further, Florida is host to a range of drug-trafficking activity.<sup>48</sup> The United States Justice Department cites the state's well-developed transportation infrastructure, fourteen seaports, and “proximity to drug-producing and transshipment countries” as primary drivers of drug trafficking through Florida.<sup>49</sup> While Florida is a drug-trafficking hotspot, the rate of drug abuse among its residents is not particularly high when compared to other states and the District of Columbia.<sup>50</sup> In addition to its high prevalence of drug trafficking, Florida also faces the challenge of having the third-largest homeless population, behind California and New York.<sup>51</sup>

Perhaps because of the foregoing characteristics, Floridians and the State of Florida itself have a reputation for being slightly wacky. But the state's residents generally are not *literally* wacky; Florida has the twelfth-lowest prevalence of mental health illness in the United States.<sup>52</sup> Despite this, Florida lags behind other states in providing

45. *Presidential General Election Results Comparison – Florida*, DAVE LEIP'S ATLAS OF U.S. PRESIDENTIAL ELECTIONS, [<https://uselectionatlas.org/RESULTS/compare.php?year=1876&fips=12&f=0&off=0&elect=0&type=state>] [<https://perma.cc/8HC8-K62W>] (noting that 1960 and 1992 were the outlier years within the 1928-2016 range).

46. Ron Elving, *The Florida Recount of 2000: A Nightmare that Goes on Haunting*, NPR (Nov. 12, 2018, 5:00AM), <https://www.npr.org/2018/11/12/666812854/the-florida-recount-of-2000-a-nightmare-that-goes-on-haunting> [<https://perma.cc/RDY9-EXHW>] (“[T]he all-important Electoral College count from the other 49 states (and District of Columbia) was so close that whoever won Florida would be the overall winner. The margin in the Sunshine State was so close that it took one's breath away.”).

47. Brant, *supra* note 26.

48. See *Florida Drug Threat Assessment*, NAT'L DRUG INTELLIGENCE CTR. (July 2003), <https://www.justice.gov/archive/ndic/pubs5/5169/overview.html> [<https://perma.cc/R3PR-2N9G>].

49. *Id.*

50. See Divya Raghavan, *States with the Highest Rates of Drug Use*, BETTER DOCTOR (May 11, 2015), <https://betterdoctor.com/blog/states-highest-rates-drug-use/> [<https://perma.cc/G7H3-2SYK>] (identifying Florida as having the twenty-fifth highest rate of overall illicit drug use in the country, eighteenth highest rate of cocaine use, and forty-eighth highest rate of non-medical use of pain relievers).

51. *Homelessness Statistics by State*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, [https://www.usich.gov/tools-for-action/map/#fn\[\]=1400&fn\[\]=2900&fn\[\]=6000&fn\[\]=9900&fn\[\]=13500](https://www.usich.gov/tools-for-action/map/#fn[]=1400&fn[]=2900&fn[]=6000&fn[]=9900&fn[]=13500) [<https://perma.cc/YWE4-7CVT>].

52. MENTAL HEALTH AM., *THE STATE OF MENTAL HEALTH IN AMERICA 2020*, at 18 (2019), <https://mhanational.org/sites/default/files/State%20of%20Mental%20Health%20in%20America%20-%202020.pdf> [<https://perma.cc/S8V9-5BTP>].

access to mental health care resources; in a survey of the fifty states and the District of Columbia, Florida ranked fortieth in access to mental health care.<sup>53</sup>

In sum, Florida is an attention-grabbing state for many reasons, including its theme parks, beaches, country clubs, retirement communities, political relevance, drug activity, and alligators, both the reptile and the University of Florida variety (not to mention Florida's oranges,<sup>54</sup> lack of income tax,<sup>55</sup> and televised criminal trials<sup>56</sup>). Needless to say, by the time the Florida Man meme would come about, goings-on in Florida had a receptive audience.

### B. *Who Exactly Is Florida Man?*

Florida Man is a popular culture phenomenon fueled by news stories that have captured the attention of people across the United States, involving various men, women, and even animals<sup>57</sup> or inanimate objects<sup>58</sup> from Florida. While people in other states undoubtedly generate interesting news,<sup>59</sup> only Florida Man has become a well-known popular culture reference.<sup>60</sup> The @\_FloridaMan

53. *Id.* at 19.

54. See *Facts About Florida Oranges & Citrus*, VISIT FLA., <https://www.visitflorida.com/en-us/eat-drink/facts-about-florida-citrus-oranges.html> [<https://perma.cc/583H-HK2K>] (“Today [orange growing] is a \$9 billion industry, employing nearly 76,000 Floridians.”).

55. David Rae, *The Seven States with No Income Taxes*, FORBES (Apr. 3, 2019, 3:49 PM) <https://www.forbes.com/sites/davidrae/2019/04/03/states-with-no-income-taxes/#34da05291b1c> [<https://perma.cc/9ZGX-A2CQ>].

56. See *Chandler v. Florida*, 449 U.S. 560, 569-83 (1981) (holding that Florida's legalization of media coverage of criminal trials is not unconstitutional); see also Chris Harris, *A Brief History of Some of America's Most Famous Televised Trials*, PEOPLE MAG. (Feb. 11, 2020, 10:10 AM), <https://people.com/crime/televised-trials-in-america/> [<https://perma.cc/SV8N-KMVT>] (referencing criminal prosecutions predominantly in California, Florida, and Arizona, and notably the Florida trials involving Ted Bundy, Casey Anthony, and others, as some of the most famous in American history).

57. See, e.g., Scottie Andrew, *A Florida Dog Put a Car into Reverse and Drove It in Circles for Nearly an Hour*, CNN (Nov. 27, 2019, 6:47 AM), [https://www.cnn.com/2019/11/22/us/florida-dog-drives-circles-trnd/index.html?utm\\_term=link&utm\\_source=fbCNN&utm\\_medium=social&utm\\_content=2019-11-22T23%3A01%3A03](https://www.cnn.com/2019/11/22/us/florida-dog-drives-circles-trnd/index.html?utm_term=link&utm_source=fbCNN&utm_medium=social&utm_content=2019-11-22T23%3A01%3A03) [<https://perma.cc/74MM-NZSM>].

58. See Tamara Lush, *Alligators, Pricy Bananas, and Naked People: 2019 in Florida*, AP NEWS (Dec. 29, 2019), <https://apnews.com/9e9b700b961cdfbd550c6c559b14b5aa> [<https://perma.cc/PT8N-NHCJ>] (explaining that “Florida Banana managed to eclipse Florida Man” when, in December 2019, a Florida couple purchased a work at Art Basel consisting of a banana duct-taped to a wall for more than \$100,000).

59. See, e.g., Nicole Darrah, *Arkansas Woman Claims Brother Fed Her “Meth Sandwich,”* FOX NEWS (Oct. 10, 2019), <https://www.foxnews.com/us/arkansas-woman-brother-arrested-meth-sandwich> [<https://perma.cc/S6GP-YKJX>].

60. See Cole, *supra* note 24 (explaining that although “Floridians are not all that different from [their] neighbors in . . . other . . . states,” there are a lot of news stories about relatively minor occurrences in Florida compared with other states); Melissa Locker, *10 Most WTF Florida Man Stories of 2016 (So Far)*, ROLLING STONE (Oct. 17, 2016, 4:44 PM),

Twitter account,<sup>61</sup> created in late January 2013,<sup>62</sup> is often credited for igniting the frenzy over Florida Man stories by sharing myriad entertaining headlines from the state with a large audience.<sup>63</sup> Within days of the Twitter account's launch, a Florida Man subreddit started.<sup>64</sup> Florida Man has also expanded beyond social media, presenting itself in the form of t-shirts and other apparel,<sup>65</sup> beer,<sup>66</sup> a documentary featuring "eccentric Florida residents,"<sup>67</sup> and even a short-lived Off-Broadway play.<sup>68</sup>

At the heart of the Florida Man news stories are catchy and usually humorous headlines. These headlines have a reliable formula: they begin with "Florida Man" (or Florida "Woman," "Couple," or "Dog," among other subjects) and are followed by a description of unusual

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<https://www.rollingstone.com/culture/culture-lists/10-most-wtf-florida-man-stories-of-2016-so-far-110631/florida-man-steals-a-van-to-drive-to-waffle-house-111182/> [<https://perma.cc/VX3S-D8VE>] ("Florida Man (and woman and teen) has become a national legend for weird crimes like naked burglary or stalking the streets, armed, while dressed like a dinosaur").

61. @\_FloridaMan, *supra* note 13.

62. *Florida Man*, KNOW YOUR MEME, <https://knowyourmeme.com/memes/florida-man> [<https://perma.cc/2NFU-R9DM>] (stating that the @\_FloridaMan Twitter account was created on January 26, 2013).

63. See, e.g., Hill, *supra* note 11 (noting that Florida Man was "first defined on Twitter in 2013"); Norman, *supra* note 23 ("Florida Man was formalized as a news genre by a Twitter account founded in 2013 . . ."). Freddie Campion, a creative and branding professional, created and administered the @\_FloridaMan Twitter account. See Freddie Campion, LINKEDIN, <https://www.linkedin.com/in/freddiecampion/> (listing the @\_FloridaMan Twitter account as one of Campion's projects and stating that the account is "credited with popularizing the 'Florida Man' meme").

64. See r/FloridaMan, *supra* note 14 (stating that the page was created on Jan. 31, 2013).

65. See Shop, FLA. MAN, <https://floridaman.com/shop/> [<https://perma.cc/AYA3-GXYF>].

66. See *Florida Man*, CIGAR CITY BREWING, <https://www.cigarcitybrewing.com/beer/florida-man/> [<https://perma.cc/A87T-3L4T>]. The advertisement for the beer—Florida Man Double India Pale Ale—reads:

The world needs heroes, and in our home state of Florida only a very special hero will do. A hero with a shark tooth around his neck, a Grim Reaper tattoo on his arm, and a rap sheet longer than his mama's mustache. A hero who's forgotten more about amateur taxidermy and alligator rasslin' than you'll ever know. What better way to pay tribute to our beloved Florida Man than with a big ol' Double India Pale Ale brewed with a nearly criminal amount of hops and a moderate bitterness that just about matches Florida Man's general disposition. This hopped-up whopper of a beer is big in character and guaranteed to sear itself into your memory, just like 'the world's worst superhero,' Florida Man.

*Id.*

67. See *Florida Man*, *supra* note 62; FLORIDA MAN (Very Ape Productions 2015).

68. See Howard Cohen, "Sunshine State Has Weirdness for Everyone." *So He's Taking "Florida Man" Off-Broadway*, MIA. HERALD (June 12, 2019, 11:51 AM), <https://www.miamiherald.com/news/state/florida/article231467143.html>. The play had its opening night on July 31, 2019 and closed on Aug. 3, 2019; *Florida Man*, THEATER MANIA, [https://www.theatermania.com/shows/new-york-city-theater/florida-man\\_329042](https://www.theatermania.com/shows/new-york-city-theater/florida-man_329042) [<https://perma.cc/DSE5-BXAM>]; Florida Man has become so popular that *Know Your Meme*, an internet meme database, has a page dedicated to tracking the Florida Man trend and the various ways it has manifested itself in popular culture. *Florida Man*, *supra* note 62.

behavior that reporters deem newsworthy,<sup>69</sup> usually because it is illegal or simply entertaining. For example, on November 23, 2016, CBS News reported, “Fla. man runs over own leg with truck after leaving strip club.”<sup>70</sup> WPLG Local 10 reported on February 9, 2019, “Florida woman’s maternity photo includes alligator, shotgun, Bud Light.”<sup>71</sup> The New York Daily News published an article on May 29, 2015 titled, “Florida man, 82, slashes woman’s tires over stolen bingo seat.”<sup>72</sup> A September 2019 Fox News headline reads, “Florida couple had sex inside patrol car after arrest for riding bicycles while drunk.”<sup>73</sup> Simply typing “Florida Man” into a web browser will reveal many such similarly odd stories. Reporters commonly construct these stories from arrest records<sup>74</sup> and sometimes from other sources, such as Floridians’ social media posts<sup>75</sup> or interviews with residents.<sup>76</sup>

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69. See *Florida Man*, *supra* note 62; cf. Norman, *supra* note 23 (“Some of the reporting of the Florida Man genre is undeniably worthwhile journalism. A guy throwing a live alligator into a Wendy’s drive-thru is undeniably interesting. A naked man stealing a swan statue is newsworthy when the statue is reportedly worth \$25,000 and remains missing. And when someone in a full Easter Bunny costume is caught on video in a street brawl during the holiday, you simply can’t not show it.”).

70. Crimesider Staff, *Video: Fla. Man Runs Over Own Leg with Truck After Leaving Strip Club*, CBS NEWS (Nov. 23, 2016, 6:04 PM), <https://www.cbsnews.com/news/video-florida-man-runs-over-own-leg-with-truck-after-leaving-strip-club/> [<https://perma.cc/QWA4-9NU6>].

71. Tim Swift, *Florida Woman’s Maternity Photo Includes Alligator, Shotgun, Bud Light*, WPLG LOC. 10 (Feb. 9, 2019, 4:19 PM), <https://www.local10.com/news/2019/02/09/florida-womans-maternity-photo-includes-alligator-shotgun-bud-light/> [<https://perma.cc/RC4L-LTZY>] (reporting that in taking this photo, the woman felt she was “reaching critical Florida woman levels”).

72. Rachele Blidner, *See It: Florida Man, 82, Slashes Woman’s Tires Over Stolen Bingo Seat*, N.Y. DAILY NEWS (May 29, 2015, 12:59 PM), <https://www.nydailynews.com/news/crime/florida-man-slashes-woman-tires-bingo-seat-article-1.2240168>.

73. Dom Calicchio, *Florida Couple Had Sex Inside Patrol Car After Arrest for Riding Bicycles While Drunk*, FOX NEWS (Sept. 18, 2019), [https://www.foxnews.com/us/florida-couple-had-sex-inside-patrol-car-after-arrest-for-riding-bicycles-while-drunk-reports?fbclid=IwAR0051T4xGuypP4LHy1M03YblimlIzoSaqoUCHFArF92\\_y\\_wnj0Ehv-W98wg](https://www.foxnews.com/us/florida-couple-had-sex-inside-patrol-car-after-arrest-for-riding-bicycles-while-drunk-reports?fbclid=IwAR0051T4xGuypP4LHy1M03YblimlIzoSaqoUCHFArF92_y_wnj0Ehv-W98wg) [<https://perma.cc/N7HW-6WJM>].

74. Norman, *supra* note 23 and accompanying text; see, e.g., Daniel Avery, *Florida Man Breaks into House and Makes Breakfast, Tells Homeowner “Go Back to Sleep,”* NEWSWEEK (Sept. 6, 2019, 11:50 AM), <https://www.newsweek.com/florida-man-breaks-house-makes-breakfast-tells-homeowner-go-back-sleep-1458077> [<https://perma.cc/4N4Y-RNAS>] (citing the arrest report in the body of the news story).

75. See, e.g., Colin Wolf, *Shirtless Florida Man Removes 9-Foot Alligator from Swimming Pool*, ORLANDO WKLY. (Oct. 17, 2019, 2:42 PM), <https://www.orlandoweekly.com/Blogs/archives/2019/10/17/shirtless-florida-man-removes-9-foot-alligator-from-swimming-pool> [<https://perma.cc/7XL5-8PXQ>] (describing a Florida man’s removal of an alligator from a homeowner’s pool, as documented by the man himself on his Instagram page).

76. See, e.g., Colin Wolf, *Florida Man Wants the U.S. Military to Fight Hurricane Dorian with Ice*, ORLANDO WKLY. (Sept. 2, 2019, 9:28 AM), <https://www.orlandoweekly.com/Blogs/archives/2019/09/02/florida-man-wants-the-us-military-to-fight-hurricane-dorian-with-ice> [<https://perma.cc/K2EG-EPAG>].

So, who exactly is the man in “Florida Man”? The term “Florida Man” is based on the media’s practice of using generic geographic descriptors for a person who is the subject of a headline or news story when that person’s name is not well-known.<sup>77</sup> In other words, “Florida Man” is a “typical” Florida resident, not an individual with celebrity status.<sup>78</sup> So, while the general public is rarely familiar with the specific subjects of Florida Man stories, to many, “Florida Man” is a household name.

Applications of the “Florida Man” concept to people from other states<sup>79</sup> (or even other countries<sup>80</sup>) have been short-lived compared with the Florida Man meme. What makes Florida Man special? Part I.C provides background on the law that many have proposed is the key contributor to the meme’s success.

### C. Open Records Laws

Every state has laws that provide the public access to state and local government information.<sup>81</sup> These laws consist primarily of open meetings laws and open records laws.<sup>82</sup> Open meetings laws allow the

77. See *Headlines: Making an Impact – Accurately*, KY. UNIV., <https://web.ku.edu/~edit/heads.html> [<https://perma.cc/BD9Z-5UFK>].

78. As Bob Norman explains, Florida is “the destination of a sizable number of the nation’s most notorious monsters and misfits. (Carlo Ponzini, Meyer Lansky, Ted Bundy, Andrew Cunanan, and O.J. Simpson are some of the more distinguished),” but these individuals are not the focus of “Florida Man” stories. Norman, *supra* note 23. Nor typically are politicians, although the media has used “Florida Man” to describe President Trump, see *supra* note 17 and accompanying text, and Florida Governor Ron DeSantis, see Ben Terris & Josh Dawsey, *Does Florida Gov. Ron DeSantis Know What He’s doing? We’re About to Find Out*, WASH. POST (May 11, 2020), [https://www.washingtonpost.com/lifestyle/does-florida-gov-ron-desantis-know-what-hes-doing-were-about-to-find-out/2020/05/08/8bf6537c-9135-11ea-a9c0-73b93422d691\\_story.html](https://www.washingtonpost.com/lifestyle/does-florida-gov-ron-desantis-know-what-hes-doing-were-about-to-find-out/2020/05/08/8bf6537c-9135-11ea-a9c0-73b93422d691_story.html) [<https://perma.cc/EU3Y-7CG6>] (commenting on DeSantis’s response to the coronavirus, and stating: “Gov. Ron DeSantis is a certain kind of Florida Man. Not because he wore jean shorts and flip-flops to his first day of classes at Yale or because he recently put a surgical mask on upside-down at a news conference . . . . But as he begins to end Florida’s stay-at-home order while the coronavirus pandemic continues to rip through the United States, it’s hard not to imagine the governor standing astride the alligator cage, hollering at the rest of the country to check out what’s about to happen.”).

79. See Associated Press, *Inside The “Florida Man” Craze That’s Taking Over the Internet*, N.Y. POST (Mar. 22, 2019, 10:52 PM), <https://nypost.com/2019/03/22/inside-the-florida-man-craze-thats-taking-over-the-internet/> [<https://perma.cc/DEC6-2VNZ>] (“Once, it seemed as though all the weird people and stories came from California. But over the past decade, it shifted to Florida.”).

80. Cf. *Florida Man*, *supra* note 62 (describing the “Columbian Man” derivative of Florida Man). A simple Google search for “Columbian Man meme” reveals the redundancy of those memes.

81. See generally *Introduction to the Open Government Guide*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (2019), <https://www.rcfp.org/introduction-to-the-open-government-guide/> [<https://perma.cc/U7R4-SNLZ>] (“The Open Government Guide is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia detailing the rights of reporters and other citizens to see information and attend meetings of state and local governments.”).

82. See *id.* (identifying access to meetings and access to records as the types of laws that the Open Government Guide discusses).

public to observe government meetings,<sup>83</sup> and open records laws give people access to records that the government produces or receives as part of its official business.<sup>84</sup> Because public records, more than open meetings, are a common source of Florida Man stories,<sup>85</sup> this Article focuses on open records laws.

Open records laws empower the public to gain access to government information, specify the processes for obtaining access, enumerate exceptions to public access, and establish requirements for agencies' compliance with the laws.<sup>86</sup> The state laws are separate from the Freedom of Information Act<sup>87</sup> (FOIA) passed in 1966—which governs disclosure of federal government records—although some state-level open records laws are modeled after FOIA.<sup>88</sup> A few states' constitutions also guarantee a right to access government records,<sup>89</sup> in addition to statutory rights.

Florida has a reputation for facilitating government transparency through expansive open government laws,<sup>90</sup> including its open records

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83. See, e.g., N.Y. PUB. OFF. LAW § 100 (McKinney 2019) (explaining that the purpose of New York's open meetings law is to allow New York citizens to "be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy").

84. See, e.g., FLA. STAT. ANN. § 119.011(12) (2020) (stating that any person may inspect or copy any public record of the State of Florida or its counties or municipalities and defining "public records" to include "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").

85. See Norman, *supra* note 23 and accompanying text.

86. See Keith W. Rizzardi, *Sunburned: How Misuse of the Public Records Laws Creates an Overburdened, More Expensive, and Less Transparent Government*, 44 STETSON L. REV. 425, 429 (2015) ("In general, the public records laws follow a standard pattern. Public records statutes provide rights to citizens and groups that can request records, define the records that are subject to and exempt from disclosure, provide guidance on allowable fees that can be charged to the person requesting records, identify procedures for enforcement of the law, and establish sanctions for noncompliance.").

87. 5 U.S.C. § 552 (2018).

88. See Eumi K. Lee, *Monetizing Shame: Mugshots, Privacy, and the Right to Access*, 70 RUTGERS U. L. REV. 557, 561 (2018). For information on how state public records laws compare with FOIA, see Christopher P. Beall, *The Exaltation of Privacy Doctrines Over Public Information Law*, 45 DUKE L.J. 1249, 1284-85 (1996) (explaining that some states' public records laws "exhibit a [greater] willingness to favor disclosure [of records] over privacy" than FOIA).

89. See, e.g., CAL. CONST. art. I, § 3(b)(1); FLA. CONST. art. I, § 24(a); ILL. CONST. art. VIII, § 1(c); LA. CONST. art. XII, § 3; MONT. CONST. art. II, § 9; N.H. CONST. art. 8; N.D. CONST. art. XI, § 6.

90. See Richard J. Ovelman, Reporters Comm. for Freedom of the Press, INTRODUCTION TO THE OPEN GOVERNMENT GUIDE (2019), <https://www.rcfp.org/open-government-guide/florida/> (last visited Dec. 1, 2021) ("Florida has the most expansive open government laws in the country."); see also Sandra Ferguson Chance & Colleen Connolly-Ahern, *A Vote of Confidence? Florida's Public Records Law and the 2000 Presidential Election Recounts: Could It Happen in Any Other State?*, 13 U. FLA. J.L. & PUB. POL'Y 135, 136, 151 (2001) (suggesting that the 2000 presidential election ballot recount likely would not have been

law.<sup>91</sup> Chapter 119 of the Florida Code sets forth Florida's Public Records Law,<sup>92</sup> originally passed in 1909.<sup>93</sup> The statute expresses Florida's policy that "all state, county, and municipal records are open for personal inspection and copying by any person" and that "[p]roviding access to public records is a duty of each agency."<sup>94</sup> Florida's judicial and attorney general opinions also favor broad disclosure.<sup>95</sup>

In addition to its public records statute, Florida is one of the few states that grants a constitutional right to access government records.<sup>96</sup> A 1992 amendment to the Florida Constitution provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state . . . except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."<sup>97</sup> The amendment specifies that the legislature may create exceptions to public access of government records "provided that such law[s] shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law."<sup>98</sup> Although the Florida Constitution provides a right to privacy, this right does not automatically trump the state's policy favoring public records availability.<sup>99</sup>

While all states have open records laws, Florida's garners significant attention. Scholars and reporters have called Florida's open records law "a model of open government"<sup>100</sup> and, along with Florida's open meetings law, "the most expansive open government laws in the country."<sup>101</sup> Florida itself is quite proud of its reputation for government transparency; the state Attorney General has called Florida's system of open government "a valued and intrinsic part of the

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possible in most other states because "Florida is the only state that allows for an immediate independent review of ballots").

91. See Rizzardi, *supra* note 86, at 425.

92. FLA. STAT. ANN. §§ 119.01-.15 (2020).

93. *Open Government – The "Sunshine" Law*, FLA. OFF. ATTY GEN., <https://myfloridalegal.com/pages.nsf/Main/DC0B20B7DC22B7418525791B006A54E4> [<https://perma.cc/8XH3-F23P>].

94. FLA. STAT. ANN. § 119.01(1) (2020).

95. See *infra* note 122 and accompanying text.

96. Rizzardi, *supra* note 86, at 442 ("In Florida, a *constitutional* right of access reflects the intensity of the State's commitment to individual access to 'public records' . . .").

97. FLA. CONST. art. I, § 24(a).

98. *Id.* § 24(c).

99. See *id.* § 23 ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.")

100. Rizzardi, *supra* note 86, at 442; cf. Shannon, *supra* note 19 (describing the relative ease with which reporters can access government records in Florida compared with reporters' ability to obtain such records in other states).

101. See Ovelman, *supra* note 90.



heritage of” the state.<sup>102</sup> Parts I.D and II explain how Florida’s reputation for open government serves as a common explanation for Florida Man’s existence.

#### D. Florida Man Hypotheses

Given Florida Man’s popularity, perhaps it is no surprise that many people have a theory regarding its origin. Nearly all who have commented on why Florida Man exists suggest that Florida’s open records law plays a key—or even the only—role.<sup>103</sup> Commentators theorize that, because the content of many Florida Man stories is based on police reports such as arrest records<sup>104</sup>—which fall within the scope of Florida’s Public Records Law<sup>105</sup>—journalists have easy access to newsworthy content.<sup>106</sup> Some proponents of this theory of Florida Man emphasize that, while states like California and New York are, like Florida, known for their “eccentricity,” only Florida Man became a viral meme.<sup>107</sup> By so heavily emphasizing Florida’s Public Records Law, this theory neglects the impact that other factors have on Florida Man’s existence. Further, even if Florida’s Public Records Law *is* a driver of Florida Man, no in-depth analysis of the law itself or comprehensive comparison of the law with other states’ open records laws exists to confirm that relationship.

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102. 43 GOVERNMENT-IN-THE-SUNSHINE MANUAL xiii (2021), [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/\\$file/SunshineManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/$file/SunshineManual.pdf) [<https://perma.cc/U5JQ-F9TS>].

103. See, e.g., Cole, *supra* note 24 (suggesting that Floridians are not different from residents of other states, but rather that Florida’s laws allow journalists to cover Floridians’ activities in unique ways); Norman, *supra* note 23 (“Florida has no monopoly on strange events, drug addiction, or mental illness . . . . What it does have is strong public records laws that make obtaining mugshots and arrest reports easier than in many other states (including California and New York, which aren’t known for their lack of eccentricity, either).”); *The Adventures of Florida Man*, FAIL BLOG, <https://amp.cheezburger.com/10243845/the-adventures-of-florida-man> [<https://perma.cc/56G5-RPSS>] (“Thanks to some interesting laws that make it way easier to get ahold of arrest records, there are a disproportionate amount of wacky crime stories that come out of Florida.”).

104. Norman, *supra* note 23; see, e.g., Jackie Salo, *Florida Man Tells Cops Playing Basketball Naked “Enhances” Skills*, N.Y. POST (May 14, 2019, 2:05 PM), <https://ny-post.com/2019/05/14/florida-man-tells-cops-playing-basketball-naked-enhances-skills/> [<https://perma.cc/D5GU-QPZW>] (quoting a police officer’s report of an incident involving a man without any clothes in a public park).

105. FLA. STAT. ANN. §§ 119.01-.19 (2020) (excluding police reports and arrest records from the law’s exceptions to disclosure).

106. Cf. David Moye, *America’s Weirdest State Is Still Florida*, HUFF POST (Nov. 22, 2012, 10:38 AM), [https://www.huffpost.com/entry/americas-weirdest-state-\\_n\\_2174199](https://www.huffpost.com/entry/americas-weirdest-state-_n_2174199) [<https://perma.cc/2BGK-Q6Z5>] (“[T]he Sunshine State has been the cure for many a slow news day. Even if things are normal in all the other 49 states (and Puerto Rico), Florida is there to provide.”).

107. See Associated Press, *supra* note 79; Norman, *supra* note 23.

Many also cite Floridians' purported eccentricity—stemming from its large and diverse population<sup>108</sup> as well as other unique aspects of the state—as a driver of Florida Man.<sup>109</sup> In other words, the state has good raw material for Florida Man stories. As *Tampa Bay Times* reporter Craig Pittman has claimed, in a state like Florida, which is home to people of many backgrounds, “of course [people are] going to start chasing each other with machetes.”<sup>110</sup> Beyond the uniqueness of Floridians themselves, people have also suggested that Florida's tropical climate makes for attention-grabbing news.<sup>111</sup> Under this theory, commentators note that many Florida Man stories involve hurricanes and alligators—things that are not nearly as prevalent in states such as California or New York.<sup>112</sup> This suggests that Floridians' behavior and Florida itself is odder or otherwise substantially different from the residents and characteristics of other states. But the idea that Floridians are all that different from the rest of America is not universally accepted.<sup>113</sup>

One possible explanation that Florida Man theorists have largely neglected is that Florida Man has found notoriety due to the nature of the internet, including the use of social media and memes,<sup>114</sup> which allows an audience already captivated by news about Florida to regularly consume Florida Man content. This theory suggests that because news stories are widely available on the internet and because social media users readily share and comment on stories that interest them, Florida Man's popularity grew in a metaphorical echo chamber of ones and zeros.<sup>115</sup> One person started a Florida Man Twitter account, possibly inspiring the Florida Man subreddit that appeared two days later,

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108. See, e.g., Silman, *supra* note 25 (“[Florida is] the third-most populous state, with 20 million people and nearly 100 million annual visitors all crammed into a narrow peninsula where we can ram our cars into each other and yell at each other in a dozen different languages.”).

109. Lizette Alvarez, @*FloridaMan Beguiles with the Hapless and Harebrained*, N.Y. TIMES (May 10, 2015), [https://www.nytimes.com/2015/05/11/us/both-hapless-and-hare-brained-florida-man-enlivens-internet.html?\\_r=1](https://www.nytimes.com/2015/05/11/us/both-hapless-and-hare-brained-florida-man-enlivens-internet.html?_r=1) [<https://perma.cc/N96R-LZKF>] (“[I]s the ‘Florida Man who Accidentally Shoots Himself With Stun Gun While Trying to Rob the Radio Shack He Also Works At’ truly more wacky than, let’s say, an Arkansas Man or New Jersey Man? Longtime observers insist that he is.”).

110. Norman, *supra* note 23; see also Alvarez, *supra* note 109 (sharing a Florida lawyer's view that Florida “breeds or inspires its own brand of crime and criminals” because of polarization between its socioeconomic and political extremes, party culture, and influx of immigrants).

111. See *infra* notes 303-305 and accompanying text.

112. See *infra* notes 305-313 and accompanying text.

113. See Brant, *supra* note 26 (arguing that Florida is not unusual, but rather is a representation of America as a whole).

114. See Hill, *supra* note 11.

115. See *id.*; cf. James Gleick, *What Defines a Meme?*, SMITHSONIAN MAG. (May 2011), <https://www.smithsonianmag.com/arts-culture/what-defines-a-meme-1904778/> [<https://perma.cc/X4L5-NNPY>] (“Ideas cause ideas and help evolve new ideas. They interact

and by 2019—thanks to internet culture—millions of people were searching the Florida Man Challenge.<sup>116</sup> Writers and reporters have caught on to the trendiness of Florida Man,<sup>117</sup> leading to compilations of Florida Man stories<sup>118</sup> and articles about the meme’s popularity,<sup>119</sup> inspiring more Florida Man stories, and furthering the spread of Florida Man across the internet. As a result, Florida Man is now its own news category.<sup>120</sup> If Florida Man were *just* an internet creation—without perpetually new information about Florida residents and ways to access it—it would eventually lose steam, which it shows no sign of doing.

None of these theories can stand on their own. A thorough explanation for Florida Man recognizes the significant role that popular culture and the internet play in its popularity and considers the impact that all three explanations have on the trend. This Article addresses commentary on Florida Man’s origins to date by providing a previously nonexistent analysis of the Florida Public Records Law’s impact on Florida Man and considering the interplay between the law and other factors. Although the Florida open records statute makes Florida Man possible, and the unique traits of Floridians and the state as a whole provide interesting subject matter for Florida Man stories, these factors have had minor roles in bringing Florida Man to life.

## II. FACTORS CONTRIBUTING TO THE CREATION OF FLORIDA MAN

A comprehensive comparison of the open records laws of the fifty states and the District of Columbia reveals that Florida’s version of the law, while unique in some respects, does not differ from other states’ laws in ways that would have a significant impact on Florida Man. While Florida’s Public Records Law likely influences Florida Man, Florida Man’s inception and existence is more directly the result

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with each other and with other mental forces in the same brain, in neighboring brains, and thanks to global communication, in far distant, foreign brains. And they also interact with the external surroundings to produce in toto a burstwise advance in evolution that is far beyond anything to hit the evolutionary scene yet.”).

116. See *supra* notes 6-14 and accompanying text.

117. Norman, *supra* note 23 (explaining that a Florida Man story titled “Drunk, shirtless Florida man arrested after shoveling spaghetti in his mouth at Olive Garden,” spread across the internet because news sites across the country, knowing that Florida Man stories generate significant audience engagement, picked it up).

118. See, e.g., Stephen Green, *Florida Man Friday: TSA Won’t Find Anything on Her*, P.J. MEDIA (Jan. 17, 2020), <https://pjmedia.com/vodkapundit/florida-man-friday-tsa-wont-find-anything-on-her/> [<https://perma.cc/5M78-BY63>] (one example from P.J. Media’s “Florida Man Friday” column).

119. See, e.g., Cass Anderson, *Here’s the Reason Why Crazy ‘Florida Man’ News Seems Way More Popular and Common than Every Other State*, BROBIBLE (Mar. 22, 2019), <https://brobible.com/culture/article/why-florida-man-news-so-popular/> [<https://perma.cc/MJ2K-NXL5>].

120. Norman, *supra* note 23.

of other factors—primarily, the development of popular culture trends through the internet and memes. Part II examines the theory that the Florida Public Records Law is the leading influence behind Florida Man by examining common features of state open records laws and analyzing provisions of Florida’s law compared with those in other states that may have influenced Florida Man’s development. Part II then discusses the people and characteristics unique to Florida that could make for more newsworthy material than is available in other states. Finally, Part II analyzes the role that the internet and popular culture have had in promoting Florida Man’s long-standing following and concludes that these are the factors that most substantially contribute to Florida Man.<sup>121</sup>

### A. *Commonalities Among Open Records Laws*

If one accepts the idea that Florida’s Public Records Law is the primary driver of Florida Man, the question becomes—which provisions of the law are unique compared with the open records laws of other states? Unlike what the open records law-based explanation for Florida Man would suggest, several features of Florida’s law—while undoubtedly contributors to the ease with which people can access government records in the state—also appear in other states’ equivalent laws. In highlighting common features among states’ open records laws, this Section dispels the suggestion that such provisions uniquely position Florida as a breeding ground for a trend like Florida Man and narrows the focus of this Article to other factors within the law and beyond it that are more likely to influence the existence of Florida Man.

First, while Florida’s Public Records Law presumes open access to government records, almost all other state open records laws also contain this presumption. Florida liberally construes its Public Records Law in favor of open government and narrowly construes any of the

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121. To test the hypothesis that Florida’s Public Records Law is the primary reason for Florida Man, my research assistants and I examined the open records laws of all fifty states and the District of Columbia to understand whether and how Florida’s law is unique. We began by identifying the overall structure of open records laws and common components of the laws to further research within each state’s law. The Reporters Committee for Freedom of the Press’s *Open Government Guide* was particularly helpful in providing a framework for researching these laws. Reporters Comm. for Freedom of the Press, INTRODUCTION TO THE OPEN GOV’T GUIDE, <https://www.rcfp.org/open-government-guide/> [<https://perma.cc/4HLB-D8MD>]. In addition to each state’s statute, we consulted policy and practice manuals, case law, attorney general opinions, and scholarly articles to gain a comprehensive understanding of each state’s treatment of public records. We then selected several to focus on in this Article. Criteria for selection included: significant facial similarities to or differences between the state’s law and Florida’s Public Records Law; whether the state’s overall policy toward or reputation for open government mirrored Florida’s or differed from it; and similarities between Florida and the state in terms of population size, diversity, and other characteristics.

law's exceptions to disclosure,<sup>122</sup> which are limited to those that the statute recognizes.<sup>123</sup> Other states approach their open records laws similarly.<sup>124</sup> For example, even in Massachusetts, which is known for having a weak open records law,<sup>125</sup> “[e]very record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part.”<sup>126</sup> This presumption means that in lawsuits challenging denial to access of government records, the defendant agency or municipality has the burden of proving that it may legally withhold all or part of the records in question.<sup>127</sup> Presuming that state government records are open is also consistent with those states’ policies “favor[ing] disclosure over privacy in the perennial battles for public access to [government] information.”<sup>128</sup>

Another common characteristic of open records laws across the country is an expansive definition of “public record.” Chapter 119, Florida’s Public Records Law, defines “public records” to include “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.”<sup>129</sup> Stated simply, *anything* that a government agency makes or receives in fulfilling official government business is potentially open to the public.<sup>130</sup> The Florida Supreme Court has clarified that the law does not permit public access to government records at all stages of development. For example, in a 1980 case, the court held that handwritten notes about job candidates were not subject to disclosure because they were

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122. *WFTV, Inc. v. Sch. Bd. of Seminole Cnty.*, 874 So. 2d 48, 53 (Fla. Dist. Ct. App. 2004) (citing *Seminole Cnty. v. Wood*, 512 So. 2d 1000, 1002 (Fla. Dist. Ct. App. 1987)); see GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 102, at 171-72 (stating that Chapter 119 should be liberally construed in favor of disclosure of records and that exceptions should be narrowly construed and only apply to further their stated purposes).

123. *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420, 425 (Fla. 1979).

124. See *infra* notes 125-126 and accompanying text.

125. See *Massachusetts Public Records Guide*, MUCKROCK, <https://www.muck-rock.com/place/united-states-of-america/massachusetts/> [<https://perma.cc/4QGD-YXD3>] (“Massachusetts has a reputation for being one of the most difficult states to get records out of, but recent reforms have at least created the potential for the law—which has particularly broad carveouts for police records—to finally have some teeth.”).

126. WILLIAM FRANCIS GALVIN, DIV. OF PUB. RECORDS, A GUIDE TO THE MASSACHUSETTS PUBLIC RECORDS LAW 1 (Mar. 2020).

127. See, e.g., MASS. GEN. LAWS ANN. ch. 66, § 10A(d)(1)(iv) (West 2019) (“[A] presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law.”); *Bougas v. Chief of Police*, 354 N.E.2d 872, 876 (Mass. 1976) (applying § 10A(d)(1)(iv)).

128. Beall, *supra* note 88.

129. FLA. STAT. ANN. § 119.011(12) (2020).

130. See *id.*

preliminary materials that were not created to “perpetuate, communicate, or formalize knowledge.”<sup>131</sup> Essentially, government-made or government-kept records are open to the public when they are intended to be official documents. Except for its narrowly construed exceptions,<sup>132</sup> Florida’s law leaves the door wide open to public access.

The scope of material that open records laws cover is similarly broad in other states. For example, New York’s law defines “record” in a nearly identical manner to Florida. It provides a non-exhaustive list of specific types of records that are subject to the law if “kept, held, filed, produced, or reproduced by” the government.<sup>133</sup> Similarly, Maryland’s open records law defines public records equally as broadly: public records include “original or any cop[ied versions] of *any* documentary material that is made [or received] by a unit or an instrumentality of the State or of a political subdivision . . . in connection with the transaction of public business . . . in *any* form.”<sup>134</sup> The use of inclusive terms in states’ open records laws establishes a broad scope of information that the government must make available to the public if the laws’ other criteria are met.

Consistent with the goal of making government records as readily available as possible, Florida’s Public Records Law does not require requesters to include a reason or justification for public records requests.<sup>135</sup> This is also true in other states.<sup>136</sup> In limited circumstances, a person requesting records may be required to agree that records will *not* be used for a particular purpose; for example, in New York, agencies may “require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists . . . for solicitation or fund-raising purposes” or facilitate such use of the lists by others.<sup>137</sup> But even when an open

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131. *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.*, 379 So. 2d 633, 640 (Fla. 1980).

132. See *infra* Part II.B.1 (Covered Records and Exceptions) (discussing exceptions to disclosure of public records under Florida’s law).

133. N.Y. PUB. OFF. LAW § 86(4) (McKinney 2019) (“‘Record’ means *any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever* including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.” (emphasis added)).

134. MD. CODE ANN. GEN. PROVISIONS § 4-101 (LexisNexis 2019) (emphasis added). Beyond agencies themselves, private corporations in Maryland, if agency-created or essential to agency functions, are also subject to the law. See *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406, 425-28 (Md. 2006) (holding that a not-for-profit corporation was an instrumentality of the city of Baltimore and thus was subject to Maryland’s Public Information Act).

135. *Open Government – Frequently Asked Questions*, FLA. OFF. ATT’Y GEN., <http://www.myflsunshine.com/pages.nsf/Main/321B47083D80C4CD8525791B006A54E3#15> [<https://perma.cc/QD7P-JB4K>].

136. See, e.g., *Submit a FOIL Request*, N.Y. STATE – OPEN FOIL NY, <https://open-foil.ny.gov/#/newfoilrequest> [<https://perma.cc/G7S3-MSYX>].

137. See N.Y. PUB. OFF. LAW § 89(3)(a).

records law requires negative purpose statements, people in most states are free to request government records for any non-prohibited reason without disclosing it in the request, which facilitates seamless requests of public records.<sup>138</sup>

If neither the presumption that government records are open to the public, the large scope of records covered by the law, nor the limited information required in public records requests distinguishes Florida's law, what, if anything, does? The following Section focuses on other provisions of open records laws across the United States that are more varied from state to state and discusses the impact that Florida's versions of these provisions could have on Florida Man.

### B. *Variables Across Open Records Laws*

Various features of Florida's open records law help explain Florida Man's inception and continued following—and why Florida Man is more popular than, say, California Man or New York Man. For example, some of the records that most commonly form the basis of Florida Man stories, such as mugshots, are more readily available in Florida than in other states. Additionally, Florida's Public Records Law prescribes less burdensome procedures for requesting access to public records than other states. But some provisions—while they contribute to the breadth of Florida's law—have less of an impact on Florida Man than the open records law-based theory for Florida Man would suggest. Examining various features of states' open records laws demonstrates how Florida's law has influenced, although only to a limited extent, Florida Man's popularity.

#### 1. *Covered Records and Exceptions*

State open records laws across the country are drafted with a presumption that the public has access to government records.<sup>139</sup> However, every open records law has its limits: all contain exceptions to the presumption that records should be disclosed to the public (some states' laws call them exemptions).<sup>140</sup> One might wonder whether Florida makes the types of records that commonly fuel Florida Man stories available, while other states exempt them from disclosure. But analysis of states' exemptions reveals that this is generally not the case. This Section first discusses exceptions to open records laws broadly, and then examines specific records that fuel Florida Man stories and whether those records are available to reporters in all states.

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138. See generally *Introduction to the Open Government Guide*, *supra* note 82.

139. See *supra* notes 122-128 and accompanying text.

140. See, e.g., FLA. STAT. ANN. § 119.071 (West 2020).

(a) *Exceptions*

Chapter 119 defines an exemption as “a provision of general law which provides that a specified record . . . or portion thereof, is not subject to the access requirements of [the law] or § 24, Art. I of the State Constitution.”<sup>141</sup> The law recognizes only statutory exemption, whether they exist within the Public Records Law itself or in other sections of the Florida Code.<sup>142</sup> When the state legislature creates an exemption to the Public Records Law, the legislature must specifically state the public necessity for the exemption and construct the exception to be no broader than necessary to accomplish its purpose.<sup>143</sup>

In other states, exemptions may exist outside of the state code. For example, the Louisiana Supreme Court has held that it may determine that additional records not named in the statute or the state constitution should be exempt from mandated disclosure.<sup>144</sup> Applying what it viewed as its inherent authority to regulate the practice of law in the state, the court prohibited public disclosure of bar examination materials.<sup>145</sup> Pennsylvania is another state that recognizes non-statutory exemptions to its open records law.<sup>146</sup> Pennsylvania’s law declares that the statute does not “supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.”<sup>147</sup> The ability of the executive and judicial branches in states other than Florida to create exemptions to disclosure of records suggests that in Florida, where only the legislature can create exceptions, more records might be publicly available.

At least with respect to how exceptions to public disclosure are created, the exemptions to Florida’s Public Records Law are less expansive than in other states, suggesting—like much of Florida Man speculation—that the law allows greater access to public records. However, the Florida Public Records Law is not alone in only recognizing statutory exemptions to the law. The District of Columbia

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141. *Id.* § 119.011(8).

142. *Id.* § 119.071.

143. FLA. CONST. art. I, § 24(c).

144. *See Bester v. La. Supreme Court Comm. on Bar Admissions*, 779 So. 2d 715, 721 (La. 2001). The court ruled this way despite the Louisiana statute’s statement that the only valid exceptions to its open records law exist in the statute or the state constitution. *See LA. STAT. ANN. § 44:4.1(A)* (2019) (“Any exception, exemption, and limitation to the laws pertaining to public records not provided for in [the Louisiana open records statute] or in the Constitution of Louisiana shall have no effect.”).

145. *See Bester*, 779 So. 2d at 720-21 (citing the court’s authority to impose additional limitations on public disclosure in “exercising [its] inherent authority as the head of a separate and independent branch of state government”).

146. 65 PA. STAT. AND CONS. STAT. ANN. § 67.306 (West 2019).

147. *Id.*



and New York, for example, also have only statutory exemptions to their laws.<sup>148</sup> Again, the question of whether Chapter 119 is really all that different from every other state's open records law arises.

Florida's interpretation of its exceptions to Chapter 119's disclosure requirements lends some support to the hypothesis that Florida's law allows the public broader access to state government records. States differ in their treatment of exemptions to disclosure as either subject to an agency's discretion or never disclosable for any purpose. In Florida, aside from records that are exempt from disclosure because other parts of the Florida Code deem the records confidential, Florida government officials have discretion in determining whether records should be disclosed.<sup>149</sup> In other words, even if a record falls under an exception, government officials are permitted to disclose the record under some circumstances.<sup>150</sup>

Yet Florida is not alone in allowing for disclosure of records that fall under an exemption in particular circumstances, with some states taking the same approach. In New Mexico, if a record is exempt from the open records law, the agency maintaining the record may release it if doing so "would be appropriate and not in violation of any other law that specifically requires that the record be kept confidential."<sup>151</sup> Conversely, Tennessee's open records law treats all records exempt from disclosure as confidential records that may not be disclosed under any circumstances.<sup>152</sup> Other states, such as Indiana, take a hybrid approach, dividing exceptions into two categories: one that allows agencies discretion in whether to disclose the records and another that prohibits disclosure.<sup>153</sup> Thus, in a state like Florida or New Mexico,

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148. *Barry v. Wash. Post*, 529 A.2d 319, 321 (D.C. 1987) ("[I]n the absence of a statutory exemption, a court has no general equitable power to prevent disclosure under FOIA of public documents and records."); *Fink v. Lefkowitz*, 393 N.E.2d 463, 470-71 (N.Y. 1979) ("Only where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld.")

149. *WFTV, Inc. v. Sch. Bd. of Seminole Cnty.*, 874 So. 2d 48, 53 (Fla. Dist. Ct. App. 2004).

150. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. Dist. Ct. App. 1991). This is consistent with Florida Attorney General interpretation. Confidential records cannot be revealed at all, but an agency may use its discretion in determining whether to reveal exempt information. *School Boards – Public Records*, 2008 Fla. Op. Att'y Gen. No. 2008-24, 1, 4 (2008).

151. OFFICE OF THE N.M. ATTORNEY GEN., *NEW MEXICO INSPECTION OF PUBLIC RECORDS COMPLIANCE GUIDE* 9 (8th ed. 2015).

152. *See* TENN. CODE ANN. § 10-7-504(a)(1)(A) (2020) (designating exceptions as "confidential" or "not [] open for inspection by members of the public").

153. *See* IND. CODE ANN. § 5-14-3-4(a)-(b) (West 2020) (distinguishing between records that "may not be disclosed by a public agency" and records that "shall be excepted from [disclosure] . . . at the discretion of a public agency").

where exemptions are not absolute prohibitions on disclosure as in other states, records are more likely to be available to the public than in a state such as Tennessee.

However, the number of exemptions in Florida's law compared with other states is counterintuitive to the notion that Florida provides greater access to public records.<sup>154</sup> While Florida has more rigid requirements for exemptions to the Public Records Law, such as only permitting statutory exemptions, there are so many exemptions that there is no consensus as to the exact number.<sup>155</sup> It is difficult to count or even estimate the number of exemptions in Florida's Public Records Law because some exemptions are in Chapter 119 itself, but others are scattered elsewhere in the Florida Code.<sup>156</sup> Further, prior to 1984, exceptions to the Public Records Law that the legislature codified outside of Chapter 119 were not consistently identified as an exemption to that part of the code.<sup>157</sup> Due to this complexity in identifying the total number of exemptions to Florida's Public Records Law, estimates range from between 200 and 600<sup>158</sup> to more than 1,000.<sup>159</sup> Regardless of the exact number of exemptions to disclosure in Florida, there are a lot. Based solely on the number of statutory exemptions to Florida's open records law, records do not appear to be more available to the public than in other states.

On the other hand, New Mexico's open records statute lists seven general types of records that are not open to the public and contains a catchall exception for records free from the requirements of public

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154. Presumably, the more records that a state's open records law applies to, the more open government records would be in that state. It follows that in states with fewer exceptions to their open records laws, records would be more open than in states with more exceptions to their open records laws.

155. See Ovelman, *supra* note 90.

156. See, e.g., FLA. STAT. ANN. § 281.301(1) (2020) (information related to security and fire safety systems for any state-owned or state-leased property); *id.* § 395.3035(2) (certain hospital records, including contracts for managed care arrangements, strategic plans, and trade secrets).

157. Ovelman, *supra* note 90.

158. *Id.*; but see *Florida Government in the Sunshine: A Citizen's Guide*, BRECHNER CTR. FOR FREEDOM OF INFO. 14 (2006) <https://brechner.org/wp-content/uploads/2017/09/citizen-guide-2006.pdf> [<https://perma.cc/6GV2-GDTJ>] (stating that there are more than 850 records exempt from Chapter 119's requirements).

159. Jessie Gomez, *Is There an Ideal Public Records Law Among the 50 States?*, MUCKROCK (Nov. 2, 2018), <https://www.muckrock.com/news/archives/2018/nov/02/ideal-public-records-law-update/> [<https://perma.cc/HDP7-M369>]; *About the First Amendment Foundation*, FIRST AMEND. FOUND., <https://floridafaf.org/about/> [<https://perma.cc/BC8G-EM7Q>] (counting 1,159 exceptions to Florida's open government laws). Florida's law is not the only state for which exceptions are difficult to quantify; *Compare Gomez, supra* (noting that Tennessee has 563 exceptions to its open records statute), *with Tennessee v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 866 (Tenn. 2016) (estimating that Tennessee's open records law has "over forty" exceptions).

disclosure “as otherwise provided by law.”<sup>160</sup> On the face of its open records law, New Mexico has far fewer categories of exceptions to public disclosure than Florida, though those categories are broad<sup>161</sup> and thus might encompass a similar number of exempt records. Similarly, there are around twenty-five exceptions to Connecticut’s open records law, but they may encompass several types of records.<sup>162</sup> This could mean that records are more or equally as open in New Mexico and Connecticut compared with Florida. Either way, one might wonder, “Why no New Mexico Man?”

In addition to statutorily enumerated and judicially created exceptions, some states’ open records laws have a general privacy-based exception to disclosure of public records.<sup>163</sup> These exceptions are founded upon individual privacy rights,<sup>164</sup> rather than a governmental need for confidentiality of specific subject matter. The somewhat nebulous parameters of these exceptions are a sharp departure from the narrow construction of many other exceptions.

Florida’s Public Records Law does not contain a privacy exception.<sup>165</sup> Accordingly, upon a valid request, Florida officials must disclose records to the requester even if disclosure infringes upon an individual’s right to privacy, as long as no other exception to the open records law applies.<sup>166</sup> The subjects of such records cannot assert their own constitutional rights to privacy to overcome the statute’s mandated disclosure of them.<sup>167</sup> Unlike in states with a general privacy exception, in Florida, an individual’s privacy does not prevail over the public’s right of access to public records.

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160. N.M. STAT. ANN. § 14-2-1 (West 2020). The seven exceptions listed in New Mexico’s statute are: (1) documents regarding physical or mental examination or medical treatment of people who are institutionalized; (2) reference letters regarding licensing, employment, and permits; (3) records covering subjects that are a matter of opinion in student and personnel files; (4) portions of law enforcement records involving information about confidential sources, methods, or information, as well as information about an accused’s or victim’s identity before charges are filed; (5) records that fall under the Confidential Materials Act; (6) trade secrets, information falling under attorney-client privilege, and public hospitals’ long-range or strategic business plans that are discussed in closed meetings; and (7) the state’s or a political subdivision of the state’s tactical response plans that would threaten security if published. *Id.*

161. *Id.*

162. Gomez, *supra* note 159.

163. See Lee, *supra* note 88, at 592.

164. See *infra* notes 172-175 and accompanying text (quoting statutory provisions in New York law and Massachusetts law that base disclosure of public records on whether such disclosure would “constitute an unwarranted invasion of personal privacy”).

165. Cf. FLA. CONST. art. I, § 23 (stating that the state constitution’s grant of an individual right to privacy does not create an exception to the open records law).

166. See *id.* (“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.”).

167. Williams v. City of Minneola, 575 So. 2d 683, 697 (Fla. Dist. Ct. App. 1994).

On the other hand, open records laws elsewhere include broad exceptions for records that would threaten individual privacy if open to the public. For instance, New York's open records statute expressly permits the denial of access to any record or portion of a record that "would constitute an unwarranted invasion of personal privacy" if publicly disclosed.<sup>168</sup> The New York statute identifies eight types of situations in which disclosure would jeopardize personal privacy protections.<sup>169</sup> This list is notably not exhaustive,<sup>170</sup> suggesting that in choosing not to disclose or contesting disclosure of a record, an agency or an individual might be able to establish a unique reason for nondisclosure based on privacy concerns. Massachusetts takes a similar approach to New York, including a nearly identical provision as New York's privacy exception in its open records statute.<sup>171</sup> Perhaps unsurprisingly, this broad privacy exception is the most frequently invoked exception to the Massachusetts open records law.<sup>172</sup>

The inclusion of privacy-based exceptions to disclosure of public records in states like New York and Massachusetts, and the regular use of such exceptions, stymies the public's ability to access government records in those states. Unlike non-privacy-based exceptions within states' open records laws, the privacy exception represents a clear point of divide between Florida's Public Records Law and other states' laws. More so than any other category of exception and most other components of open records laws discussed in this Article, the lack of a general privacy exception in Florida's open records law suggests a legally based reason for the non-existence of "New York Man" or "Massachusetts Man."

But a broader analysis of exceptions to open records laws, including the source, meaning, number, and type of exceptions, diminishes the impact that Florida's Public Records Law could have on Florida Man. While Florida permits only statutory exceptions and its public officials have more discretion in whether to disclose exempt information than officials in other states, exceptions in Florida outnumber exceptions in other states by most estimates. Therefore, although Florida's law seems to permit the public broader access to public records than some states, such as Tennessee or Indiana, exceptions in Florida are not all that different from those in other states, such as New Mexico.

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168. N.Y. PUB. OFF. LAW § 87(2)(b) (McKinney 2019).

169. *See id.* § 89(2)(b)(i)-(vii).

170. *Id.* § 89(2)(b).

171. *See* MASS. GEN. LAWS ANN. ch. 4, § 7 (West 2019) (exempting records containing information "relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy").

172. GALVIN, *supra* note 126, at 16.

In reality, much of the government's business outside of arrest and incident reports remains closed to the public in Florida.<sup>173</sup>

(b) *Treatment of Specific Records: Incident Reports, Arrest Records, and Mugshots*

While understanding the scope of exceptions to open records laws is essential for comparing the strength of Florida's law with that of others, it is more important to examine how states treat the types of records that form the basis of Florida Man. Government agencies produce numerous records—the sheer number of agencies within any state government,<sup>174</sup> coupled with the expansive scope of public records that are made open to the public,<sup>175</sup> means that the public has access to an extraordinary amount of government information. But only a few types of records require deeper analysis in identifying the explanation for Florida Man because many of the Florida Man stories do not involve the inner workings of state agencies and instead commonly rely on criminal or outlandish behavior. These include incident reports,<sup>176</sup> arrest records,<sup>177</sup> and mugshots.<sup>178</sup>

In a large majority of states, police records of reported incidents and arrests are open for public inspection.<sup>179</sup> In Florida, arrest reports are

173. Cf. Daniel Chang, *Herald Drafted a Suit Seeking AFL Records. DeSantis Aide Pressured Law Firm Not to File It*, MIA. HERALD (Apr. 11, 2020, 7:36 PM), <https://www.miami-herald.com/news/coronavirus/article241942211.html> [<https://perma.cc/G4J6-X3X2>] (discussing how Florida Governor DeSantis's general counsel pressured an attorney for the Miami Herald to not file a lawsuit to compel the governor's office to disclose public records that include the names of elder care facilities where people had tested positive for the coronavirus).

174. Florida, for example, has at least fourteen cabinet entities and at least twenty-four executive agency entities, not to mention the offices of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture, as well as local government entities. *State of Florida Organizational Chart*, GOV'T PROGRAM SUMMARIES, <https://op-paga.fl.gov/ProgramSummary/> [<https://perma.cc/4LQE-GZKL>].

175. See generally *supra* Part II.A (Commonalities Among Open Records Laws) (discussing the scope of government records that open records laws allow the public to access).

176. See, e.g., Slisco, *supra* note 12 (drawing details from an incident/investigation report).

177. See Norman, *supra* note 23 (suggesting that arrest reports are the source for most Florida Man stories).

178. See *id.* (explaining that even when a story is not particularly newsworthy, an associated mugshot might still provide a "selling point" for the story).

179. See generally Reporters Comm. for Freedom of the Press, OPEN GOV'T GUIDE: POLICE BLOTTER (2019), <https://www.rcfp.org/open-government-sections/2-police-blotter/> [<https://perma.cc/V6ZR-MTZH>] (compiling information on disclosure of police blotter under states' open records laws); "Police blotter" is defined as "a book that records arrests and other facts and events in a police station, on a daily basis." *Police Blotter Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/p/police-blotter/> [<https://perma.cc/FCP2-4BHY>]; Typically, "[d]etails such as name, age, and address of the suspect/person arrested, time and place of an incident, name of the officer who responded to the incident, and name of the victim/complaining person should be included in a police blotter." *Id.*; but see Freedom of Information Act, 1979 MICH. OP. ATTY GEN., No. 5500, 1979 WL 36558, at \*26 (July 23,

generally disclosable to the public under the Public Records Law.<sup>180</sup> Arrest information and related details from incident reports or criminal charging documents specifically fall outside of Chapter 119's exceptions for active criminal intelligence and investigative information,<sup>181</sup> which are not subject to the same disclosure requirements.<sup>182</sup> Similarly, other states distinguish between information that the government gathers through crime prevention or criminal investigative activities—disclosure of which could jeopardize public safety, among other risks<sup>183</sup>—and basic identifying details about a reported incident or an arrest, allowing disclosure of the latter under open records laws. For instance, New York exempts full or partial records that “are compiled for law enforcement purposes and which, if disclosed, would . . . interfere with law enforcement investigations . . . [or] reveal criminal investigative techniques or procedures.”<sup>184</sup> But incident and arrest reports are generally not exempt from disclosure in New York.<sup>185</sup>

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1979) (“The fact that a person has been arrested is neither a determination of guilt nor a decision that a prosecuting attorney will decide to charge him with committing a crime. Therefore, unless the person requesting the information can demonstrate a public benefit in the disclosure of the fact that a person has been arrested without a warrant, the damage to the individual’s privacy overcomes the need for the public to have this information. I am, therefore, of the opinion that a law enforcement agency may refuse to release the name of a person who has been arrested, but not charged, in a complaint or information, with the commission of a crime.”).

180. See *Open Government – Frequently Asked Questions*, *supra* note 135 (“Arrest reports prepared by a law enforcement agency after the arrest of a subject are generally considered to be open for public inspection.”).

181. See FLA. STAT. ANN. § 119.011 (2020) (“‘Criminal intelligence information’ and ‘criminal investigative information’ [which are exempt from disclosure under Chapter 119] shall not include: [t]he time, date, location, and nature of a reported crime[;] [t]he name, sex, age, and address of a person arrested or of the victim of a crime except as provided [elsewhere in Chapter 119]; [t]he time, date, and location of the incident and of the arrest[;] [or] [t]he crime charged.”). In the absence of a statutory provision making such arrest information confidential, the information is subject to Chapter 119’s requirements for disclosure to the public. 1977 FLA. ATT’Y GEN. ANN. REP. 125.

182. “‘Criminal intelligence information’ means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.” FLA. STAT. ANN. § 119.011(3)(a) (2020); “‘Criminal investigative information’” is the same type of information “compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission.” *Id.* § 119.011(3)(b). “Active criminal intelligence information and active criminal investigative information are exempt from” the disclosure requirements of Florida’s Public Records Law. *Id.* § 119.071(2)(c).

183. See, e.g., ALASKA STAT. § 40.25.120(A)(6) (2019) (exempting records from disclosure under Alaska’s open records law that were compiled for law enforcement purposes when disclosure of such records could reasonably be expected to, for example, “deprive a person of a right to a fair trial or an impartial adjudication; . . . constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness; . . . [or] endanger the life or physical safety of an individual”).

184. N.Y. PUB. OFF. LAW § 87(2)(e) (McKinney 2019).

185. N.Y. Civ. Liberties Union v. City of Schenectady, 814 N.E.2d 437, 439 (N.Y. 2004). The same is true in other states. See, e.g., Steven D. Zansberg et al., OPEN GOV’T GUIDE: COLO., <https://www.rcfp.org/open-government-guide/colorado/> [<https://perma.cc/ET5P->

States' consistent treatment of incident reports and arrest records as open to the public suggests that Florida Man stories—at least to the extent that these police records provide sources for them—should be no more common than stories about similar incidents in other states.

Public access to mugshots, however, varies more from state to state and may help explain why Florida Man is more popular than his neighbors. Treatment of mugshots as records that are open to the public or exempt from disclosure is less uniform across the country than treatment of documents with arrest or incident information.<sup>186</sup> In her article examining the “mugshot industry,” Professor Eumi Lee has summarized the various ways in which states approach disclosure of mugshots.<sup>187</sup> She explains that mugshots are presumed to be open in about thirty states.<sup>188</sup> This includes Florida, where, although the statute does not identify mugshots as open to the public, the Office of the Attorney General has declared that mugshots cannot be read into the narrowly construed exceptions to the Public Records Law.<sup>189</sup> Elsewhere, however, the public cannot obtain mugshots from the government because they fall within an exception to open records laws. New York generally prohibits disclosure of mugshots because they are included within the general privacy exception in New York's open records law.<sup>190</sup> Perhaps because a picture speaks a thousand words, reporters who can supplement information about reported crimes and arrests with mugshots can generate news, like Florida Man stories, that is more likely to capture readers' attention than stories about crime in other states.

Comparing how states handle specific types of records shows that reporters have one clear advantage in writing about Floridians over writing about residents of other states: easier access to mugshots. But an explanation of Florida Man that rests solely on this premise would be hindered by the twenty-nine other states that also provide access to mugshots through their open records laws—not to mention that nearly all states allow disclosure of written records about incidents and arrests. Further, many Florida Man stories are based on information

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B9AK] (summarizing 1977 amendments to Colorado's open records law such that “criminal justice agencies . . . [have] discretion to withhold all criminal justice information *other than records of official action, such as records of arrest, detention, charging, conviction, etc.*” (emphasis added)).

186. See Lee, *supra* note 88, at 593-97 (dividing states based on their treatment of mugshots as presumptively open, presumptively closed, or dependent upon a relationship to a privacy exception within the state's open records law).

187. See *id.*

188. *Id.* at 593.

189. *Id.*; see 1994 FLA. ATTY GEN. ANN. REP. 90 (stating that mugshots are not exempt from the disclosure policies of Florida's Public Records Law).

190. See N.Y. PUB. OFF. LAW §§ 87(2)(b), 89(2)(b)(viii) (McKinney 2019) (stating that government agencies may deny access to records that “if disclosed would constitute an unwarranted invasion of personal privacy,” defined as including “disclosure of law enforcement arrest or booking photographs of an individual”).

that reporters obtain through sources beyond government records, such as social media content and interviews with residents,<sup>191</sup> minimizing the role that government records play in the Florida Man obsession.<sup>192</sup> Access to police records is undoubtedly part of the Florida Man puzzle, but it does not fully explain Florida Man's prevalence.

## 2. *Making Requests*

Each state's open records law specifies procedures for requesting access to government records. These procedures include who can request records, methods for requesting records, and required content of requests. Florida's processes for requesting public records contribute to the ease of access to records, including those that form the basis of Florida Man stories, such as arrest records and police incident reports. The relatively simple request process increases the volume of source material available to journalists, facilitating an abundance of Florida Man stories. But similar provisions in other states' open records laws undermine the role that request processes for Florida public records play in Florida Man.

### (a) *Who Can Request Records*

Chapter 119 permits "any person"—regardless of state residency, U.S. citizenship, or age, whether "the most outstanding civic citizen or the most heinous criminal"<sup>193</sup>—to request Florida records.<sup>194</sup> However, the openness of Florida's records to any person is one of the least unique aspects of Florida's Public Records Law. In most other states,

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191. See *supra* notes 75-76 and accompanying text.

192. For a deeper discussion of the role that the internet, including social media, plays in the Florida Man phenomenon, see *infra* Part II.C.2 (A Cultural Phenomenon).

193. Church of Scientology Flag Serv. Org., Inc. v. Wood, No. 97-01548, at 12 (Fla. 6th Cir. Ct. 1997), available at [http://myfloridalegal.com/sun.nsf/cases/314FCDCE356D3A05852578A8004BFF72/\\$file/Church+of+Scientology+v.+Wood.pdf](http://myfloridalegal.com/sun.nsf/cases/314FCDCE356D3A05852578A8004BFF72/$file/Church+of+Scientology+v.+Wood.pdf) [<https://perma.cc/PA7F-NH7T>]; see FLA. STAT. ANN. § 119.01(a) (2020).

194. FLA. STAT. ANN. § 119.01(a) (2020). For the purposes of this Article, "person" also means an organization or entity. Prior to 1975, the Florida Public Records Law allowed only state citizens the ability to request public records, but the provision was deleted GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 102, at 157.



open records laws similarly allow any person to request public records.<sup>195</sup> Some states, such as Louisiana, limit the pool of possible requesters to people of the age of majority,<sup>196</sup> but this difference likely does little to explain Florida Man's popularity since most reporters of Florida Man stories can be assumed to be above the age of majority.

(b) *Method of Request*

Florida's open records statute neither prescribes nor proscribes a specific format for requesting public records.<sup>197</sup> People can make requests for Florida public records using any medium in which they can sufficiently communicate the request to the custodian—whether in person or by email, phone, letter, or fax.<sup>198</sup> If a Florida agency decides that a request should be documented in writing, it can require the records custodian to complete a request form, but requiring a person requesting records to complete such a form is prohibited.<sup>199</sup> The Florida Attorney General's Open Government webpage, as well as Florida Department of Law Enforcement's Guide to Public Records Requests, state that while requests need not be in writing, written requests are helpful, particularly when they include precision and detail with respect to the records sought.<sup>200</sup>

While some states, such as California, provide similar flexibility in the method of request as Florida,<sup>201</sup> other states are more specific with their requirements for, or processes associated with, various request

195. See e.g., CAL. GOV'T CODE § 6253 (West 2020) (stating that "every person" has a right to access public records); IND. CODE ANN. § 5-14-3-3(a) (West 2020) (allowing "any person" to inspect public records); MD. CODE ANN. GEN. PROVISIONS § 4-202 (LexisNexis 2019) (permitting any "person or governmental unit" to request public records); *but see* ALA. CODE § 36-12-40 (2019) (granting "every citizen [the] right to inspect and take a copy of any public writing"); ARK. CODE ANN. § 25-19-105(a)(1)(A) (2020) (allowing only state citizens a right to access Arkansas public records); DEL. CODE ANN. tit. 29 §§ 10001, 10003 (2020) (stating that the purpose of the Delaware Freedom of Information Act is to hold the government accountable to state citizens and that no state citizen can be denied access to public records); TENN. CODE ANN. § 10-7-503(a)(2)(A) (2020) (permitting only Tennessee residents to inspect public records); VA. CODE ANN. § 2.2-3704(A) (2020) ("[A]ll public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth . . .").

196. LA. REV. STAT. ANN. § 44:32 (2019).

197. See *Open Government – Frequently Asked Questions*, *supra* note 135 ("Nothing in the public records law requires that a request for public records be in writing or in person . . ."). See generally FLA. STAT. ANN. § 119.01 (2020).

198. See *FDLE's Guide to Public Records Requests*, FLA. DEPT OF L. ENFT 1, <https://www.fdle.state.fl.us/Open-Government/Documents/FDLEGuidetoPublic-Records.aspx> [<https://perma.cc/MM9C-QZGL>] (Oct. 29, 2019); Ovelman, *supra* note 90.

199. GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 102, at 157.

200. *FDLE's Guide to Public Records Requests*, *supra* note 198; *Open Government – Frequently Asked Questions*, *supra* note 135.

201. CAL. GOV'T CODE § 6250 (West 2020).

methods. New Mexico, for example, allows either oral or written requests,<sup>202</sup> but statutory provisions regarding how and when records custodians must respond to requests apply only to written requests.<sup>203</sup> Therefore, records custodians in New Mexico cannot be subject to any penalties for violations of the open records law pertaining to oral requests.<sup>204</sup> Similarly, Massachusetts' open records law permits written or oral requests, but a custodian has discretion over whether to accept requests made by telephone.<sup>205</sup> Access to Massachusetts records is further limited by the fact that if a person makes an oral request—either in person or by phone—the person cannot appeal the denial of the oral request.<sup>206</sup> Compared with other states, Florida seems to make public records more accessible by allowing the public to use essentially any means to make requests and approaching all requests consistently.

(c) *Content and Purpose of Requests*

States also differ in what they require requests to include. In Florida, requesters must simply provide enough information for a custodian to understand which records the requester seeks.<sup>207</sup> A request in Florida does not need to include the requester's personal information—not even his or her name.<sup>208</sup> Similar to Florida's law, California's open records law requires only that a request "reasonably describes an identifiable record or records."<sup>209</sup> But in New Mexico, for instance, a request must include the name, address, and telephone number of the person making the request.<sup>210</sup> Florida's minimal requirements for making requests contributes to the ease with which people can access public records. However, the requirements that states like New Mexico impose are likely not burdensome enough to discourage reporters from requesting records from states outside of Florida nor preclude the reporters from obtaining them in those states.

Required disclosure of the purpose of a request might be more likely to influence requesters' behavior than a requirement for their basic

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202. N.M. STAT. ANN. § 14-2-8(A), (F) (West 2020).

203. OFFICE OF THE N.M. ATTORNEY GEN., *supra* note 151.

204. *See id.*

205. GALVIN, *supra* note 126, at 61.

206. *Id.*

207. *See Florida Government in the Sunshine: A Citizen's Guide*, *supra* note 158, at 16 ("The request for a public record should be as specific as possible. . . . A request for a record should include the subject matter, location, date, agency in charge and the name or identification of the file, if known.")

208. *See Rizzardi*, *supra* note 86, at 479 (pointing out that "Florida courts and the [state] attorney general have interpreted Florida's laws to allow public records requests to be made anonymously, without revealing any personal information," but recognizing that "there is no statutory exception supporting anonymity").

209. CAL. GOV'T CODE § 6253.1(a) (West 2020).

210. N.M. STAT. ANN. § 14-2-8(C) (West 2020).

contact information. In Florida, there is no requirement that a request's purpose be disclosed, and that purpose is irrelevant to a record custodian's determination of whether to disclose records.<sup>211</sup> Florida's law does not discriminate as to the stated or likely purpose of a request; a requester is free to use obtainable records for commercial purposes, for news reporting purposes, or to satisfy sheer personal curiosity.<sup>212</sup>

While this feature of Florida's law simplifies the request process, Florida's stance on the purpose for requests is hardly unique.<sup>213</sup> For example, in California, there are no "limitations on access to a public record based upon the purpose for which the record is being requested."<sup>214</sup> Similarly, Louisiana's law does not permit records custodians to inquire into a requester's motives.<sup>215</sup> In Massachusetts, which "has a reputation for being one of the most difficult states" in which to obtain records,<sup>216</sup> a records custodian generally cannot require a requester to disclose their purpose. But the custodian can do so under some circumstances: when the desired records contain exempt information, to determine whether the records are being requested for a commercial purpose, or to determine whether to grant a fee waiver.<sup>217</sup>

Examination of the public records request processes among the states demonstrates that Florida's is slightly simpler and more convenient than in some other states. While Florida is not particularly unique in some elements of its request process, other elements of its request process, most notably the lack of essentially any personal information required for making a request, give the public easier access to government records. As a result, journalists have ready access to arrest records and other records that they use to write Florida Man stories.

### 3. Responses to Requests

Beyond procedures for making requests, open records laws specify procedures for records custodians to follow in responding to requests, including the time in which they must respond and what they must include in their responses. Compared with other states, Florida requires records custodians to provide more thorough information in their responses. Florida is less strict about required response time,

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211. *Open Government – Frequently Asked Questions*, *supra* note 135.

212. *See id.*

213. Rizzardi, *supra* note 86, at 448.

214. CAL. GOV'T CODE § 6257.5.

215. *See* LA. STAT. ANN. § 44:32 (2021) ("[A] custodian shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person and may require the person to sign a register.").

216. *Massachusetts Public Records Guide*, *supra* note 125.

217. 950 MASS. CODE REGS. 32.06(2)(h) (2016).

however, and its agencies complete requests slower than agencies in many other states. An analysis of state laws regarding responses to requests does not reveal any substantial advantage in accessing public records in Florida that is not present in other states. But even if Florida's law did give such an advantage, timing and content of public officials' responses to requests likely has little effect on the existence of Florida Man.

(a) *Timing of Responses*

Unlike most other states' laws, Florida's Public Records Law does not mandate a specific time period in which records custodians must respond to requests for public records. Chapter 119 provides that after receiving a request, whether written or oral, an agency must first "promptly" provide a response acknowledging the request,<sup>218</sup> but the statute is silent as to *how prompt* the acknowledgement must be. The statute then requires the agency official to "mak[e] reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed."<sup>219</sup> Florida courts have held that the records custodian must then respond to the content of the request within a "reasonable response time."<sup>220</sup> The statute does not specify a numeric figure for "reasonable," but the courts have provided some direction.<sup>221</sup>

In addition to Florida, a few states do not quantify a time frame in which a records custodian must disclose records to someone who makes a public records request. Ohio's open records statute requires that public officials who receive records requests "promptly prepare[]" responses and provide any non-exempt requested records to the requesting individual "within a reasonable period of time."<sup>222</sup> Alabama's open records law is likewise silent on the timeframe for responding to public records requests, but requires records custodians to make records available upon payment of required fees.<sup>223</sup>

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218. FLA. STAT. ANN. § 119.07(1)(c) (2020).

219. *Id.* The statute characterizes such actions as a "good faith response." *Id.*

220. *Seigmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. Dist. Ct. App. 2018). While not specified in the statute, it is logical to infer that if an agency official receives a request and needs no further information from within the agency to determine how to respond, the acknowledgement and response might converge as one communication with the requester, rather than existing as two separate steps.

221. *See, e.g., id.* at 74 (noting that the Florida Public Records Law "demands prompt attention and a reasonable response time, not the quickest-possible response" and finding that a two-week response time was reasonable); *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. Dist. Ct. App. 2014) (finding that a two-month delay was unreasonable); "[U]njustifiable delay to the point of forcing a requester to file an enforcement action is *by itself* tantamount to an unlawful refusal to provide public records in violation of the Act." *Id.* at 984.

222. OHIO REV. CODE ANN. § 149.43(B)(1) (LexisNexis 2020).

223. ALA. CODE § 36-12-41 (2019).

In the majority of states, open records statutes specify a time period in which agencies must respond to public records requests, but these time periods are quite varied. New York requires records custodians to respond quickly, stating that records should be made available within five business days of receiving a request if possible.<sup>224</sup> Indiana's open records statute imposes a seven-day response requirement.<sup>225</sup> New Mexico gives agencies more time to respond to requests; its statute instructs agencies to make records available "immediately or as soon as is practicable under the circumstances but not later than fifteen days after receiving a written request."<sup>226</sup> Maryland permits agencies thirty days to determine whether a request will be granted or denied.<sup>227</sup>

According to some sources, states' completion of records requests occurs much more slowly than the statutes suggest it would. While statutes impose timing requirements for agencies' turnaround of public records requests—whether a general requirement for promptness or a specific number of days in which agencies must respond—in reality, the follow-through appears to be much slower.<sup>228</sup> MuckRock reports that only three states typically take fewer than forty days to complete public records requests.<sup>229</sup> Florida, though not the slowest state, has an average completion time of seventy-five days.<sup>230</sup> Beyond differences based on the state, MuckRock attributes variance in request completion times to the types of agencies involved and the complexity of the requests.<sup>231</sup>

Despite the ambiguity in the Florida's Public Records Law about required response times as well as data suggesting requests can take over sixty days to complete, these factors likely have a minimal impact, if any, on Florida Man. Arrest records and incident reports, which are typically short and sweet<sup>232</sup> and for which disclosure is usually not

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224. N.Y. PUB. OFF. LAW § 89(3)(a) (McKinney 2019). The provision states that a records custodian may instead provide an acknowledgement of the request and an estimated date of when the request will be granted or denied, and that such acknowledgement must be provided within five business days of receipt of the request. *See id.*

225. IND. CODE ANN. § 5-14-5-9 (West 2020).

226. N.M. STAT. ANN. § 14-2-8(D) (West 2020).

227. MD. CODE ANN., GEN. PROVISIONS § 4-203 (LexisNexis 2019).

228. *See How Open Is Your Government? Find Out*, MUCKROCK, <https://www.muck-rock.com/place/> [<https://perma.cc/SW4J-M9P6>].

229. *See id.* (noting that the average records requests completion times in Rhode Island, Idaho, and Nebraska are 20, 36, and 38 days, respectively).

230. *Id.* This figure is current as of December 1, 2021, but the figures continually change and are regularly updated on the website. The slowest state on that date was Mississippi, at 156 days.

231. *Id.*

232. *See, e.g., Police Hunt Toe-Sucking Home Invader*, THE SMOKING GUN, <http://thesmokinggun.com/file/toe-sucker-sought> [<https://perma.cc/CV8A-5MYP>] (reproducing an incident/investigation report less than half a page long that is cited in a Florida Man story (Slisco, *supra* note 12)).

disputed,<sup>233</sup> are likely not the types of records that agencies are sluggish in turning over to requesters. And while Florida's open records law does not specify the time that agencies have to respond to requests, a sample of Florida Man stories suggests that reporters obtain information on crimes and other incidents quickly.<sup>234</sup> Imprecise or slow response times have not slowed the Florida Man industry, though they may undermine the strength of Florida's Public Records Law overall.

(b) *Content of Responses*

Florida's open records statute imposes various requirements on records custodians who determine that a portion or all of a requested record should not be disclosed because of an applicable exception. First, if exceptions apply to only some information within a record, the custodian should provide the record to the requester but redact the exempt information.<sup>235</sup> For the exempt, redacted sections, and in the case of an entire record falling under an exception to disclosure, the custodian must "state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to [the] exemption."<sup>236</sup> A person whose request is denied might indicate a desire for a fuller explanation of the denial, and in such a case, the statute requires the custodian to "state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential."<sup>237</sup>

New York's open records statute differs from Florida's law by not specifying any required information that a records custodian must provide the requester when denying access to the records.<sup>238</sup> If a person whose request for New York public records is denied, the requester may submit an appeal in writing.<sup>239</sup> At that point, the statute requires the government entity to "fully explain in writing . . . the reasons for further denial, or provide access to the record sought."<sup>240</sup> The more limited need to explain application of the law in New York than in Florida minimizes the level of clarity that requesters have on the law

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233. See *supra* Part II.B.3 (Responses to Requests).

234. See, e.g., Avery, *supra* note 74 (reporting events documented in an arrest report from three days earlier); Kesslen, *supra* note 4 (reporting an arrest that occurred the previous day); NBC SO. FLA., *supra* note 3 (reporting an arrest that occurred five days earlier).

235. FLA. STAT. ANN. § 119.07(d) (2020).

236. *Id.* § 119.07(e).

237. *Id.* § 119.07(f).

238. N.Y. PUB. OFF. LAW § 89(3)(a) (McKinney 2019) (requiring government entities to communicate with requesters about the timing of responding to such requests, but not requiring entities to communicate any information related to applicable exceptions should such requests ultimately be denied).

239. *Id.* § 89(4)(a).

240. *Id.*

and may increase the chance that records or portions thereof will be improperly withheld.

New Mexico's requirements for what public records custodians must communicate when denying access to partial or full records differ from those in Florida in requiring more details than simply the applicable exception within the statute.<sup>241</sup> Upon determining that information in a record cannot be disclosed, a New Mexico records custodian must provide a written statement to the requester explaining that access to the record has been denied and listing the names and positions of each individual responsible for the denial.<sup>242</sup> Notably, however, New Mexico's statute does not require the records custodian to state the reasoning for the denial, as is required in Florida.<sup>243</sup>

The required content of custodians' responses to public records requests could affect the integrity and strength of open records laws. For instance, mandating records custodians to cite to the statutory provision that requires denial of the request helps ensure that the denial of the requests is appropriate. However, it does not necessarily follow that the arrest records and police incident reports that are the foundation of Florida Man stories are more freely disclosed because those types of records clearly fall into the category of disclosable records.

#### 4. *Appeals and Violations*

Appeals processes for denial of public records requests and penalties for violations of open records laws incentivize records custodians to comply with the laws.<sup>244</sup> Most states provide multiple avenues for appealing denials, but some states impose more rigorous requirements for appeals than others. Moreover, some laws specify penalties for violations while others generally proscribe violations without indicating a particular penalty. Theoretically, the states with the most user-friendly appeals processes and the harshest penalties for public officials who violate public records laws will be places in which records are more open. This Section explores whether and how appeals and penalties provisions impact Florida Man.

##### (a) *Appeals*

Chapter 119 suggests two avenues for a requester to contest the denial of records. First, the statute explicitly offers alternative dispute

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241. N.M. STAT. ANN. § 14-2-11(B) (West 2020).

242. *Id.*

243. *See id.*

244. While public officials can violate open records laws in several ways, the focus of this Section is violations that result from denial of public records, rather than through improper records disclosures.

resolution for open government records disputes through the Office of the Attorney General’s mediation program.<sup>245</sup> Second, although the statute does not explicitly state that individuals can file civil actions to appeal the denial of a request, it references civil actions brought by private citizens in which the government asserts an exception to the law.<sup>246</sup>

Florida is not alone in offering recourse for individuals whose records requests are denied. New Mexico’s statute permits requesters of public records to challenge denials of requests in court, which, like in Florida, is an option to the requester before he or she has exhausted administrative remedies.<sup>247</sup> Similarly, Maryland’s open records law provides that a requester can appeal a denial in court within the appropriate jurisdiction and places the burden of proof on the entity or official withholding a record to show why denying access to the record is justified.<sup>248</sup> New York’s open records law offers both administrative and judicial remedies for requesters but requires them to first appeal denials within the agency from which the record was requested before filing an action in court.<sup>249</sup>

Most states allow both administrative and judicial recourse when agencies deny access to public records. Florida and the other states that allow either remedy in any order can be considered more flexible than states that require exhaustion of administrative remedies before

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245. See FLA. STAT. ANN. § 16.60(4) (2020) (“This section is intended to provide a method for resolving disputes relating to public records . . .”).

As used in this section [16.60], ‘mediation’ means a process whereby a neutral third person, called the mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a formal, nonadversarial process that has the objective of helping the disputing parties reach a mutually acceptable, voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

*Id.* § 16.60.

246. See, e.g., *id.* §§ 119.07(g), 119.11; see also GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 102, at 184 (“A person denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of [Florida’s Public Records Act].”).

247. See N.M. STAT. ANN. § 14-2-12(A)-(B) (2020) (allowing “a person whose written request [for public records] has been denied” to bring an action to enforce the act and providing that “[a] district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act”); *but see* N.M. STAT. ANN. § 14-2-8 (2020); see also *infra* note 260 and accompanying text (explaining that individuals cannot appeal denials of public records requests made orally in New Mexico).

248. MD. CODE ANN. GEN. PROVISIONS § 4-362(b)(2) (LexisNexis 2019).

249. See N.Y. PUB. OFF. LAW § 89(4)(a)-(b) (McKinney 2019) (providing that a requester must first appeal a records denial to “the head, chief executive or governing body of the entity, or the person therefor[e] designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought”).



seeking a judicial one. Yet, records relevant to Florida Man stories clearly fall outside of most states' exceptions to disclosure of public records,<sup>250</sup> which suggests that options for appeals from denial of records are not of consequence to understanding the driver of Florida Man.<sup>251</sup>

(b) *Penalties for Violations*

Florida's Public Records Law contains concrete penalties for violations of its provisions.<sup>252</sup> When compared with at least some states with more forgiving (or nonexistent)<sup>253</sup> penalties on the books, Florida custodians may be comparatively more encouraged to make public records available. In fact, some commentators conclude that the harsh penalties for violations of Chapter 119 make agencies less likely to risk consequences of wrongful nondisclosure and more likely to disclose records.<sup>254</sup>

Florida's statute outlines two categories of conduct that subjects a public officer to penalties. First, any violation of the Public Records Law, regardless of knowledge of or intent behind the violation, is a noncriminal infraction and is punishable by a fine of up to \$500.<sup>255</sup> Second, a knowing violation of the provisions of the statute is a first-degree misdemeanor and subjects the custodian to suspension, removal, or impeachment.<sup>256</sup> Whether it is because violations of the Florida open records law are uncommon, or because the requisite knowledge for violations is difficult to prove, or for some other reason, it is rare for criminal charges to actually be filed against public officials in Florida.<sup>257</sup>

While other states might not get as much recognition for their penalties for those who violate open records laws, other states' laws, like Florida's, contain significant penalties on their face. In states like Lou-

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250. See *supra* Part II.B.3 (Responses to Requests).

251. Even if public records like arrest records are denied, reporters may be unlikely to challenge the denial because there may be another arrest record or incident report that could be readily disclosed and used to generate a Florida Man article.

252. FLA. STAT. ANN. § 119.10 (2020).

253. See *infra* note 264 and accompanying text.

254. See, e.g., *Florida Public Records Guide*, MUCKROCK, <https://www.muckrock.com/place/united-states-of-america/florida/> [<https://perma.cc/BRK4-NQJT>].

255. FLA. STAT. ANN. § 119.10(1)(a) (2020).

256. *Id.* § 119.10(1)(b).

257. Kimberly Miller, *Criminal Charges Rare in Public Records Violations*, PALM BEACH POST (Dec. 8, 2017), <https://www.palmbeachpost.com/weather/criminal-charges-rare-public-records-violations/v7LaOJrQGZy6DOZAsOHs4O/> [<https://perma.cc/8B89-T2XJ>] (noting that such charges are "usually reserved for the most flagrant incidents").

isiana, officials who have repeatedly violated the statute face increased fines.<sup>258</sup> Beyond fining officials, Louisiana's and Massachusetts' laws have provisions stating that public officials may be imprisoned for violating the open records law—in addition to or in lieu of paying a fine.<sup>259</sup>

However, some states' penalties for violations of open records laws are more lenient. For example, public officials in New Mexico who fail to respond to oral requests for records are not penalized,<sup>260</sup> despite the fact that the statute permits oral requests.<sup>261</sup> And while the requester has some manner of recourse for written requests in New Mexico,<sup>262</sup> the law directs penalties only to state agencies rather than to individual public officials.<sup>263</sup> Other states also do not impose the more severe penalties that exist in Florida's and New Mexico's laws. New York's statute, for instance, does not specify penalties such as fines for the agency or removal, impeachment, or criminal liability for the public official who violates the open records law; it merely states that “[a]ny person who, with intent to prevent the public inspection of a record . . . willfully conceals or destroys any such record shall be guilty of a violation.”<sup>264</sup>

But, as previously explained, the types of records that fuel Florida Man Stories are clearly outside of the law's exceptions to disclosure.<sup>265</sup> The lack of gray area in a public official's decision of whether to disclose such records means that an official will readily disclose them and, consequently, that appeals and violations are rare. Thus, any advantages that Florida's Public Records Law provides with respect to penalties for public officials, while strengthening the law in general, likely do not influence Florida Man.

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258. See LA. STAT. ANN. § 44:37 (2019) (subjecting public officials to fines between \$100 and \$1000 for the first violation, and to fines between \$250 and \$2000 for any subsequent violation).

259. See *id.* (imprisonment for between one and six months for the first violation and between two and six months for any subsequent violation); MASS. GEN. LAWS ANN. ch. 66, § 15 (2019) (imprisonment for up to one year).

260. N.M. STAT. ANN. § 14-2-8 (West 2020).

261. *Id.*

262. See *supra* note 247 and accompanying text.

263. N.M. STAT. ANN. § 14-2-11(C). New Mexico's open records law provides different remedies for violations of denial procedures under section 14-2-11 and for post-denial enforcement actions under section 14-2-12. See, e.g., *Faber v. King*, 348 P.3d 173, 178 (N.M. 2015). Damages for violations of denial procedures are set out in New Mexico's open records law and include “damages, costs, and reasonable attorneys’ fees.” § 14-2-12(D). The types of damages available in post-denial enforcement actions are not clearly specified in the law, but the New Mexico Supreme Court has held that only compensatory and actual damages are available in such actions. *Faber*, 348 P.3d at 175.

264. N.Y. PUB. OFF. LAW § 89(8) (McKinney 2019).

265. See *supra* Part II.B.3 (Responses to Requests).

### 5. *Resources for and Attitudes Toward Access to Public Records*

Florida, like most states, provides resources to assist individuals with access to government records. Florida's Public Records Law requires the Office of the Attorney General to employ at least one mediator to resolve disputes over access to public records.<sup>266</sup> In addition to providing a mechanism whereby people can contest a public official's denial of a record,<sup>267</sup> the public records mediator's duties include "[r]ecommend[ing] . . . needed legislation n governing access to public records . . . [and] [a]ssist[ing] the Department of State in preparing training seminars regarding access to public records."<sup>268</sup>

A more common public records resource that open records statutes in other states provide is an ombudsman.<sup>269</sup> These individuals play a similar role as the public records mediators in Florida by aiming to extrajudicially resolve disputes between requesters and public officials regarding disclosure of public records.<sup>270</sup> Some states, like Maryland, have an ombudsman dedicated solely to public records issues,<sup>271</sup> while others employ ombudsmen that provide support related to any contested agency action, public records-related or not.<sup>272</sup> Presumably, accessing support from a mediator or an ombudsman to resolve a public records dispute is easier in states where such employees are responsible solely for those disputes and have fewer issues within their purview.

In addition, some states have established offices or positions within their state governments with the purpose of increasing awareness and understanding of the state's open records law. Florida is among these states and has an Office of Open Government within the Governor's

266. FLA. STAT. ANN. § 16.60(3)(a) (2020).

267. See *supra* note 245 and accompanying text (discussing the mediation program within the Florida Attorney General office as one of two possible routes individuals can take to contest a decision regarding a Florida public records request).

268. FLA. STAT. ANN. § 16.60(3)(b)-(c) (2020).

269. See Reporters Comm. for Freedom of the Press, OPEN GOV'T GUIDE: AVAILABILITY OF AN OMBUDSMAN (2019), <https://www.rcfp.org/open-government-sections/2-availability-of-an-ombudsman/> [<https://perma.cc/V55J-56KW>] (identifying states whose open records laws or other code sections establish ombudsman roles).

270. See, e.g., MD. CODE ANN., GEN. PROVISIONS § 4-1B-04(a) (LexisNexis 2019) ("[T]he Ombudsman shall make reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under [Maryland's open records statute] . . .").

271. See *id.*; see also *Connecticut Freedom of Information Commission*, CONN.'S OFF. STATE WEBSITE, <https://portal.ct.gov/FOI/Common-Elements/Top-Menu/About-Us> [<https://perma.cc/9NA5-JYEA>].

272. See, e.g., ARIZ. REV. STAT. ANN. §§ 41-1376, 41-1378 (2020) (explaining the duties of Arizona's ombudsman-citizens aide, including reviewing complaints about agency actions and investigating such acts); HAW. REV. STAT. § 96-5 (2019) ("The ombudsman has jurisdiction to investigate the administrative acts of agencies . . .").

office.<sup>273</sup> Other examples include Tennessee’s Office of Open Records Counsel,<sup>274</sup> Indiana’s Public Access Counselor,<sup>275</sup> and the New York State Committee on Open Government.<sup>276</sup> Beyond assisting with existing public records disputes, these entities offer information about open records laws to both individuals and government agencies through training on the relevant open records statute<sup>277</sup> and advisory opinions interpreting the statute.<sup>278</sup> Tennessee promotes its Office of Open Records Counsel on a website called “Transparent Tennessee,” which compiles information and resources that exist within the state to ensure transparency of state government activities.<sup>279</sup> But while Florida and Tennessee share a commitment to government transparency,<sup>280</sup> only Florida Man has risen to stardom.

Although they are not created by statute, nongovernmental organizations that promote access to public records play a role in the interpretation and application of states’ open records laws. Florida is home to many of these organizations, including the First Amendment Foundation,<sup>281</sup> the Brechner Center for Freedom of Information,<sup>282</sup> and the

273. See *Office of Open Government*, RON DESANTIS: 46<sup>TH</sup> GOVERNOR OF FLA., [https://www.flgov.com/open\\_government/](https://www.flgov.com/open_government/) [<https://perma.cc/Y7Y4-N33M>].

274. See TENN. CODE ANN. §§ 8-4-601 to -604 (2020); OPEN RECORDS COUNS., <https://comptroller.tn.gov/office-functions/open-records-counsel.html> [<https://perma.cc/F5T6-EFV8>].

275. See IND. CODE ANN. §§ 5-14-4-1 to -14 (West 2020).

276. See N.Y. PUB. OFF. LAW § 109 (McKinney 2019); see also *About the Committee on Open Government*, DEPT OF STATE COMM. ON OPEN GOV’T, <https://www.dos.ny.gov/coog/> [<https://perma.cc/75KD-XTUH>] (stating that the Committee “oversees and advises the government, public, and news media on Freedom of Information, Open Meetings, and Personal Privacy Protection Laws”).

277. See, e.g., *Public Records Training*, OPEN RECORDS COUNS., <https://comptroller.tn.gov/office-functions/open-records-counsel/open-meetings/public-records-training.html> [<https://perma.cc/8HKH-69XU>] (summarizing Tennessee’s Office of Open Records Counsel’s training on “topics such as how to receive public record requests, how to respond to public record requests, how much to charge for public records, public records policies, and what records are confidential”).

278. See, e.g., N.Y. PUB. OFF. LAW § 109 (2019) (“The committee on open government . . . shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law [and open records law].”).

279. See *About Transparent Tennessee*, TRANSPARENT TENN., <https://www.tn.gov/transparenttn/about-transparent-tennessee.html> [<https://perma.cc/VET2-3VGS>] (“The administration continues to work to have a customer-focused, efficient and effective state government. . . . Transparency and accountability are key aspects of those efforts.”).

280. See GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 102, at xiii (“Our system of open government is a valued and intrinsic part of the heritage of our state.”); *Open Government*, FLA. OFF. ATT’Y GEN., <http://www.myfloridalegal.com/pages.nsf/Main/314BA231F89C0C8A8525791B006A54E2> [<https://perma.cc/S6GK-SQEX>] (“Florida is proud to lead the nation in providing public access to government meetings and records.”).

281. FIRST AMEND. FOUND., <https://floridafaf.org/> [<https://perma.cc/EQ5U-TE97>] (last visited Dec. 1, 2021).

282. BRECHNER CTR. FOR FREEDOM OF INFO., <https://brechner.org/> [<https://perma.cc/N6TU-QGVF>].

National Freedom of Information Coalition.<sup>283</sup> Generally, each group's mission is to educate individuals and government entities about the scope of the state's open records law and deepen the state's commitment to government transparency.<sup>284</sup> Between the government's own emphasis on the strength of its open records laws and nongovernmental organizations that echo the demand for open government, it is no surprise that Florida has a reputation as a place where public records are particularly easy to access.

Among all fifty states and the District of Columbia, Florida is one (though not the only) exemplar of a state with resources to foster openness of government records. Yet, while resources like Florida's mediation program and its passionate nongovernmental organizations that are focused on access to public records bolster the strength of the open records law, the notion that these resources impact access to the undisputedly open records that fuel Florida Man stories is less tenable. Because arrest records and incident reports clearly are publicly available in most states, individuals who request those records would rarely need to use other entities to help them obtain government records or to educate stakeholders on legal requirements for disclosure of public records.<sup>285</sup> Florida may rightly be proud of its Public Records Law and the attitudes and resources that promote open government, but those attitudes and resources do not provide a complete explanation of Florida Man.

### C. Other Possible Explanations for Florida Man

The Florida Public Records Law contributes to Florida Man by giving the media a straightforward path to accessing public records. Without access to foundational sources like arrest records and police incident reports, journalists could not write many Florida Man stories. But Florida's open records law only partially explains why Florida Man is more popular than, say, California Man. Many features of the law are not all that unique compared to other states' equivalent laws. Further, the aspects of Florida's Public Records Law that are unique and contribute to the strength of the law are unlikely to come into play when journalists seek to access arrest records and police incident reports that form the basis of Florida Man stories.

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283. NAT'L FREEDOM OF INFO. COAL., <https://www.nfoic.org/> [<https://perma.cc/8ZUR-46D8>]. Though focused on public information access nationally, this organization is based in Florida. *See id.*

284. *See, e.g., Our Mission*, BRECHNER CTR. FOR FREEDOM OF INFO., <https://brechner.org/about/> [<https://perma.cc/TWZ5-TPB3>] ("The Brechner Center for Freedom of Information at the University of Florida College of Journalism and Communications exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world.")

285. *See supra* Part II.B.3 (Responses to Requests).

If Chapter 119 provides only limited insight into the Florida Man craze, then there must be other reasons for Florida Man's popularity. Florida's population and environment may also contribute to an in-depth explanation of Florida Man. The phenomenon is more thoroughly explained, however, by viewing Florida Man as an internet sensation that just happened to catch on. This Section discusses these additional theories. It posits that Florida Man has persisted mainly because of internet culture, and that while Chapter 119 and certain characteristics of Florida also contribute, they are less substantial factors in explaining the meme's longevity.

### 1. *Florida's Population and Environment*

A common Florida Man hypothesis is that Florida's unique population is behind the plethora of odd news stories coming from the Sunshine State.<sup>286</sup> It may be a matter of simple mathematics: perhaps with more people<sup>287</sup> comes more interesting news to report. Those seeking to provide an explanation for Florida Man have pointed to the state's diverse population.<sup>288</sup> However, nothing about Florida Man suggests that the mix of cultures in the state drives the phenomenon. Most Florida Man stories are limited to just that: one Florida man (or woman) behaving in a newsworthy way.<sup>289</sup> Further, throwing alligators through drive-thru windows<sup>290</sup> and other outlandish occurrences that

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286. See Alvarez, *supra* note 109 ("Hustlers and fugitives, million-dollar hucksters and harebrained thieves, Armani-wearing drug traffickers and hapless dope dealers all congregate, scheme and revel in the Sunshine State."); cf. Kristen Arnett, *Florida Women Are No Joke. I Should Know.*, N.Y. TIMES (Oct. 11, 2019), <https://www.nytimes.com/2019/10/11/arts/television/florida-girls.html?smid=nytcore-ios-share> [<https://perma.cc/96UL-YRWK>] ("I don't find anything all that interesting about watching my dogs chase around a lizard that has crept inside my home. Yet when I post about it on the internet, people find it strange. 'That's very Florida,' someone replies.").

287. Brynn Epstein & Daphne Lofquist, *U.S. Census Bureau Today Delivers State Population Totals for Congressional Apportionment*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/library/stories/2021/04/2020-census-data-release.html> [<https://perma.cc/QA7V-8M5L>] (noting that Florida has the third-largest population of the states across the United States).

288. See Alvarez, *supra* note 109 (hypothesizing that the Florida Man phenomenon is partially a result of a mix of cultures in Florida, including "legions of immigrants from Cuba, South America, Central America, and Haiti who sometimes import their old-country vendettas"); see also Adam McCann, *Most & Least Diverse States in America*, WALLETHUB (Sept. 21, 2021), <https://wallethub.com/edu/most-least-diverse-states-in-america/38262/> [<https://perma.cc/BZ2H-M4ZX>] (ranking Florida the eighth most diverse state in terms of socio-economic, cultural, economic, household, religious, and political diversity); *Race and Ethnicity in Florida*, *supra* note 28; *Immigrants in Florida*, *supra* note 29.

289. See Alvarez, *supra* note 109; see also Norman, *supra* note 23 ("The stories tend to stand as exemplars of the mythical hyper-weirdness of the Sunshine State, but more often simply document the travails of the drug-addicted, mentally ill, and homeless.").

290. Megan McCluskey, *Florida Man Arrested for Allegedly Throwing Live Alligator into Wendy's Drive-Thru Window*, TIME (Feb. 9, 2016, 1:41 PM), <https://time.com/4214021/florida-man-throws-alligator-into-wendys-drive-thru-window/> [<https://perma.cc/96PF-UMY7>].

are common in Florida Man tales are not associated with any particular culture that Florida uniquely reflects.

Because many Florida Man stories involve behavior that might be influenced by homelessness, mental health disorders, or drug use, the prevalence of those traits in Florida might help explain the phenomenon.<sup>291</sup> Florida's lack of uniqueness in facing these issues begs the question: why Florida Man versus a man from another state? Florida has the third-largest homeless population among the fifty states and the District of Columbia, behind California and New York,<sup>292</sup> neither of which has any equivalent to Florida Man. Moreover, some have suggested that Florida Man might be a consequence of the prevalence of poor mental health or the inaccessibility of mental health care resources in Florida.<sup>293</sup> However, compared with other states, Florida does not have an especially high prevalence of mental illness.<sup>294</sup> Further, some speculate that drug use in Florida may be somewhat responsible for the Florida Man phenomenon.<sup>295</sup> This possibility is evident in the stories themselves, many of which involve drugs.<sup>296</sup> Other states have higher rates of drug use, however,<sup>297</sup> so this factor on its own also likely would not explain Florida Man. In short, while homelessness, mental health issues, and drug use are often a feature of Florida Man stories, they are not a complete explanation for the trend.

A sizable older population and smaller working population may mean that more residents have more opportunities to engage in behavior worthy of a Florida Man story. Florida leads the country in its proportion of residents age sixty-five and older, at 19.1%.<sup>298</sup> Some have suggested that the varied ages of Florida's population contributes to

291. See Norman, *supra* note 23 (discussing the underlying mental health issues and other serious problems that the subjects of Florida Man stories may face).

292. *Homelessness Statistics by State*, *supra* note 51.

293. See Hill, *supra* note 11 ("Florida Man profits by punching down at the homeless, drug-addicted or mentally ill."); see also Cassandra Douglas, *Florida's Mental Health Care Ranks One of the Worst in the Nation*, NARCITY (Jan. 14, 2019, 1:56 PM), <https://www.narcity.com/us/fl/miami/news/floridas-mental-health-care-ranks-one-of-the-worst-in-the-nation> [<https://perma.cc/SQ3G-3LHN>].

294. See MENTAL HEALTH AM., *supra* note 52, at 16 (noting that Florida has been ranked as having the twenty-fourth lowest mental illness prevalence among the fifty states and the District of Columbia).

295. See Hill, *supra* note 11.

296. See, e.g., Hannah Winston, *Florida Man on Crack Leads Cops on Wild Chase, Allegedly Steals Capri Suns*, SPRINGFIELD NEWS-SUN (Sept. 23, 2016), <https://www.springfieldnewsun.com/news/weird-news/florida-man-crack-leads-cops-wild-chase-allegedly-steals-capri-suns/r5TAoY6t86ufdjJLPP9wqO/> [<https://perma.cc/4PJ5-MNGQ>] (reporting that a local man who spent two hours running from police requested water when he was finally handcuffed because he was "extremely thirsty from recently smoking crack").

297. See John S. Kiernan, *Drug Use by State: 2021's Problem Areas*, WALLETHUB (May 11, 2021), <https://wallethub.com/edu/drug-use-by-state/35150/#main-findings> [<https://perma.cc/5NLH-XB6T>].

298. Kent, *supra* note 41. In fact, in Sumter County, more than half of the residents are sixty-five or older. *Id.*

making the state a breeding ground for interesting news stories: “There’s heat, warmth, and a proximity to water that brings together the reckless young with the arthritic elderly, the wellsprings of vigor and possibility alongside those whose fountains are drying up.”<sup>299</sup> Further, Florida’s low labor participation rate compared with the rest of the country might contribute to Florida Man.<sup>300</sup> Some studies have suggested that crime, a common feature of Florida Man stories, is associated with employment trends.<sup>301</sup> But the theory that Florida Man has resulted from Floridians having too much time on their hands is largely speculative and fails to explain why petty crime in other states, especially if it is also linked to age or employment rates, has not received as much national attention.

In addition to the people who comprise Florida’s population, environmental factors may also contribute to the Florida Man phenomenon. For example, Florida’s tropical climate could factor into Florida Man-esque behavior. Studies demonstrate that crime increases in the warmer months.<sup>302</sup> Because many Florida Man stories involve crime, Florida’s warm weather may explain why Florida Man has prevailed over news stories about people from similarly diverse states that have colder weather, such as New York. Not only does warm weather typically correlate with increased crime, but it often means that people are outside more often, exposing people and their activities, criminal or not, to the public eye.<sup>303</sup> Further, the prevalence of extreme weather events in Florida generates news about the area across the country—giving Florida Man a chance to shine in the national spotlight. For example, after Hurricane Dorian in 2019, a local Florida man gained

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299. Greenhouse, *supra* note 20.

300. See FRED Economic Data, LABOR FORCE PARTICIPATION BY STATE – RELEASE TABLE: LABOR FORCE PARTICIPATION RATE, <https://fred.stlouisfed.org/release/tables?rid=446&eid=784070> [<https://perma.cc/X5CX-8H35>] (indicating that many states have a lower labor force participation rate than Florida) (data provided through Oct. 2021).

301. Cf. Gillian B. White, *Can Jobs Deter Crime?*, THE ATLANTIC (June 25, 2015), <https://www.theatlantic.com/business/archive/2015/06/can-jobs-deter-crime/396758/> [<https://perma.cc/PL6T-3LTF>] (summarizing a study that found that providing resources for employment decreased crime); Octavio Blanco, *Summer Jobs Help Keep Kids Alive and Out of Prison*, CNN BUS. (Aug. 20, 2015, 1:22 PM), <https://money.cnn.com/2015/08/14/news/economy/youth-employment-saves-lives/index.html> [<https://perma.cc/GJ99-X3AE>] (summarizing a study that found that teens and young adults with summer jobs were less likely to be imprisoned or die).

302. See Jeff Asher, *A Rise in Murder? Let’s Talk About the Weather*, N.Y. TIMES (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/upshot/a-rise-in-murder-lets-talk-about-the-weather.html> [<https://perma.cc/5XML-B43U>].

303. See Alvarez, *supra* note 109.



notoriety when he suggested having the U.S. Navy drop ice into the ocean to help cool the water down and mitigate the effects of the hurricane.<sup>304</sup>

A survey of even just a few Florida Man stories shows alligators' recurring role in Florida residents' noteworthy behavior.<sup>305</sup> For example, there have been stories about a Florida man who removed a nine-foot alligator from a backyard swimming pool,<sup>306</sup> a Florida man who fed beer to an alligator,<sup>307</sup> and a Florida man who threw an alligator into a fast food drive-thru window.<sup>308</sup> Of the approximately five million alligators in the United States,<sup>309</sup> Florida is home to about 1.3 million of them.<sup>310</sup> Despite Florida's reputation for alligators, the Scholastic Book of World Records has awarded Louisiana with the title for having the most alligators.<sup>311</sup> So, while Floridians have ample opportunity to interact with alligators<sup>312</sup> and obtain Florida Man fame, the question remains: why not Louisiana Man?

Florida is undoubtedly unique compared with the rest of the country. It boasts a large and diverse population, a tropical climate, and, of

304. See Johnny Diaz, *Just Chill: Florida Man Suggests Using Ice to Zap a Hurricane's Strength*, S. FLA. SUN-SENTINEL (Sept. 3, 2019, 9:06 A.M.), <https://www.sun-sentinel.com/news/weather/hurricane/fl-fea-florida-man-solutions-combating-hurricanes-20190903-yuvlvqhl5jga5pdpajfonsiea-story.html> [<https://perma.cc/5XJJ-6XZJ>].

305. See Cohen, *supra* note 16.

306. Colin Wolf, *Shirtless Florida Man Removes 9-Foot Alligator from Swimming Pool*, ORLANDO WKLY. (Oct. 17, 2019, 2:42 PM), <https://www.orlandoweekly.com/Blogs/archives/2019/10/17/shirtless-florida-man-removes-9-foot-alligator-from-swimming-pool> [<https://perma.cc/F6HP-CD46>].

307. Kenneth Garger, *Florida Man Arrested for Trying to Get Alligator Drunk*, N.Y. POST (Oct. 7, 2019, 8:53 PM), <https://nypost.com/2019/10/07/florida-man-arrested-for-trying-to-get-alligator-drunk/> [<https://perma.cc/TSS5-XB2F>].

308. McCluskey, *supra* note 290.

309. See Beach, *supra* note 32.

310. MENTAL FLOSS, *supra* note 31. For reference, this statistic means Florida has a higher proportion of the United States alligator population (at just over one-quarter of the total) than it does the human population (roughly 6.6%); Alligators are so commonplace in Florida that during the coronavirus outbreak in early 2020, a county in the state used the length of one alligator as a reference for how far away people should remain from each other to effectively social distance. Alaa Elassar, *A Florida County is Reminding People to Maintain a Distance of at Least One Alligator Between Each Other*, CNN (Apr. 4, 2020, 2:29 PM), <https://edition.cnn.com/2020/04/04/us/social-distancing-florida-alligator-trnd/index.html> [<https://perma.cc/98QQ-3WLL>].

311. JENNIFER MORSE, BOOK OF WORLD RECORDS 263 (2011).

312. See *Living with Alligators and Crocodiles*, FLA. FISH & WILDLIFE CONSERVATION COMM'N, <https://myfwc.com/conservation/you-serve/wildlife/gators/> [<https://perma.cc/G2XC-LTLX>].

Alligators have inhabited Florida's marshes, swamps, rivers and lakes for many centuries, and are found in all 67 counties. In recent years, Florida has experienced tremendous human population growth. Many residents seek waterfront homes, and increasingly participate in water-related activities. This can result in more frequent alligator-human interactions, and a greater potential for conflict.

*Id.*

course, alligators. While Florida's population and other characteristics provide some basis for Florida Man stories, only some features truly distinguish Florida from other states. Even considering those that do, the explanation for Florida Man is incomplete without recognizing the greatest Florida Man enabler of all: the internet and its role in modern popular culture.

## 2. *A Cultural Phenomenon*

No effort to explain Florida Man would be complete without recognizing that the primary reasons that the meme has thrived are its inherent entertainment value and the powerful internet platforms on which it has spread. Florida's reputation for eccentricity in popular culture—whether based in reality or not—existed before the meme's creation and likely made the meme entertaining from its inception.<sup>313</sup> Once the meme emerged, it largely owed its continued spread and popularity to internet users' appetite for meme-sharing. Not only are these observations essential for comprehensively understanding Florida Man, but they have also previously gone largely unmentioned by others who have tried to explain the phenomenon.<sup>314</sup>

Media and popular culture portrayed Florida as a unique place long before Florida Man flooded the internet.<sup>315</sup> One of Florida's own residents, Billy Manes, reported extensively on "the Sunshine State's nonsense" and reputation for eccentricity.<sup>316</sup> Political controversies and crime-based television shows have often depicted Florida as a one-of-a-kind locale. In the wake of the 2000 Bush versus Gore election controversy, the nation and the world turned their eyes on Florida when

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313. See, e.g., CALIFORNIA ECCENTRIC, ECCENTRIC FLORIDA: A SPACE ALIEN'S GUIDE TO THE SUNSHINE STATE (2004) (map collecting bizarre Florida facts and detailing their locations); Don Crinklaw, *Florida Rooted in Eccentricities Meet the Author*, S. FLA. SUN-SENTINEL (Apr. 15, 2001), <https://www.sun-sentinel.com/news/fl-xpm-2001-04-15-0104130608-story.html> [<https://perma.cc/8PS5-28FK>] ("We have it on pretty good authority that Florida's professional promoters really don't appreciate the best-selling work of [humor columnists] Dave Barry and—especially—Carl Hiaasen. Because those two make the locals sound like a bunch of filberts, that's why. In their hands, Florida comes off as a state full of nut cases."); *Florida Was Weird As Only It Can Be In 2011*, 4 CBS MIAMI (Dec. 30, 2011, 1:30 PM), <https://miami.cbslocal.com/2011/12/30/florida-was-weird-as-only-it-can-be-in-2011/> [<https://perma.cc/Q5VX-3N6K>] ("Remember the giant Lego man that washed up on Siesta Key beach? Or how about the puzzling story of the baby grand piano that showed up on a sandbar near Miami? That's Florida, where weird is an everyday event.").

314. See, e.g., Cole, *supra* note 24 (suggesting that "Florida's unique laws enable journalists to cover Floridians in ways that just aren't possible elsewhere," but not discussing the possibility that Florida Man's main home—internet platforms—play a role in the trend).

315. See Simon Worrall, *Florida Man Explains His State's Weirdness*, NAT'L GEOGRAPHIC (Aug. 23, 2016), <https://www.nationalgeographic.com/news/2016/08/florida-craig-pittman-sunshine-state/> [<https://perma.cc/29TM-GN38>].

316. See Manes, *supra* note 26 ("[O]ur wildly popular, semi-regular compendium of the Sunshine State's nonsense is here once more. Take a step back with us and enjoy the latest batch of anthropological (or at least political) anomalies that have forever—and will forever—define this landscape you and I know as Our Dumb State.").

the state needed to recount its votes due to uncertainty about the results.<sup>317</sup> Television shows such as *Dexter*<sup>318</sup> and *Criminal Minds*<sup>319</sup> have repeatedly suggested that Florida is home to the downright terrifying. *Dexter*, a show about a serial killer, even makes a reference to alligators.<sup>320</sup> Across a variety of media—news outlets, television, movies, and novels—Florida has been portrayed as a place of “anthropological (or at least political) anomalies that have forever—and will forever—define [its] landscape.”<sup>321</sup> This reputation ensured that readers of Florida Man stories were receptive to the content and helped the meme hit the ground running in 2013.

Beyond the state’s pre-existing reputation for differentness, when the oft-lighthearted Florida Man took off, internet and meme culture led to an exponential rise in Florida Man awareness and significantly contributed to its enduring fame. Thanks to the many social media platforms that have gained traction over the years, memes have evolved from simple images with added text to more engaging formats that can be shared on all social media platforms.<sup>322</sup> Technological advances and an increased number of internet users allow memes to spread and go viral within a matter of days.<sup>323</sup> Florida Man’s existence is a classic example of internet and meme culture at play. After the @\_FloridaMan Twitter account began posting tales of Florida Man’s exploits in 2013,<sup>324</sup> a subreddit thread began within days.<sup>325</sup> Not to be outdone, Tumblr joined the fun with *The Adventures of Florida Man and Florida Woman*,<sup>326</sup> an account posting headlines and comedic

317. *Bush v. Gore*, 531 U.S. 98 (2000); Elving, *supra* note 46.

318. James Manos, Jr., *Dexter*, SHOWTIME (Oct. 1, 2006–Sept. 22, 2013), <https://www.sho.com/dexter> [<https://perma.cc/NE5U-UXZQ>].

319. Jeff Davis, *Criminal Minds*, CBS (Sept. 22, 2005–Feb. 19, 2020).

320. James Manos, Jr., *Dexter*, *Slack Tide* (Nov. 8, 2009).

321. Manes, *supra* note 26.

322. See Benjamin Rulon Andrew Jr., *Are Memes As They Seem?*, MEDIUM (Apr. 15, 2018), <https://medium.com/@benandjunior/are-memes-as-they-seem-530ec1b79615> [<https://perma.cc/7MSH-SDAS>].

323. Kaitlyn Tiffany, *The Story of the Internet, as Told by Know Your Meme*, THE VERGE (Mar. 6, 2018), <https://www.theverge.com/2018/3/6/17044344/know-your-meme-10-year-anniversary-brad-kim-interview> [<https://perma.cc/FQ27-SRBW>] (explaining the rapid spread of content on the internet in the context of videos about cats: “[T]here is this very dense, highly connected internet cat industrial complex—people who really love cats who are super well-connected to each other across several platforms, such that if you put just the right cat video in front of somebody, they can get it out to so many cat lovers that all of a sudden you’ll see it replicated 10 times in your Facebook feed.”).

324. See Hill, *supra* note 11 (explaining that as soon as the @\_FloridaMan Twitter account began posting Florida Man stories, “it took on a life of its own”).

325. r/FloridaMan, *supra* note 14.

326. See floridamanandwoman, TUMBLR, <https://floridamanandwoman.tumblr.com/> [<https://perma.cc/58XQ-B824>].

threads related to the meme. Facebook was also home to much discussion about Florida Man.<sup>327</sup> These platforms “provide[d] [the] meme[] with a nutrient-rich culture medium,” continuing to spread awareness of Florida Man.<sup>328</sup>

Nine years after the birth of Florida Man, he still pervades the internet.<sup>329</sup> In fact, one of his most famous moments occurred in the spring of 2019, when the Florida Man birthday challenge—in which internet users search their month and day of birth with the phrase “Florida Man” to generate a Florida Man headline from that date—became “a global social media phenomenon.”<sup>330</sup> While most memes are fleeting,<sup>331</sup> Florida Man has outlasted the short lifespan of the average meme and shows no signs of slowing down, suggesting its unique humor and audience appeal. The continuous buzz around Florida Man consistently motivates journalists and social media users alike to report on and share Florida Man.<sup>332</sup> Random and odd news stories exist in other states,<sup>333</sup> but as long as the Florida Man craze continues to build upon itself, the internet will not naturally create space for any other “man.”

## CONCLUSION

Many people know Florida Man; far fewer wonder what makes him so popular. Of the possible explanations for the phenomenon that have surfaced, a somewhat dry legal concept—Florida’s Public Records

327. See, e.g., News 5 Cleveland (@News5Cleveland), FACEBOOK (Mar. 21, 2019), <https://www.facebook.com/News5Cleveland/posts/have-you-taken-the-florida-man-challenge-yet-its-going-viral-google-florida-man-/10158328454264922/> [<https://perma.cc/T4SG-G88U>] (soliciting comments from followers about the headlines that users found when searching their month and day of birth with the words “Florida Man” to participate in the Florida Man Challenge).

328. Gleick, *supra* note 115.

329. See, e.g., *Florida Man*, FLA. NEWS HEADLINES, <https://floridanewsheadlines.com/articles/florida-man/> [<https://perma.cc/F2UN-P5PA>] (keeping an up-to-date list of twenty recent Florida Man stories); Jeff Zito, *The First “Florida Man” Story of 2020 Is Here*, 98.7 THE SHARK (Jan. 2, 2020), <https://987theshark.com/2020/01/02/the-first-florida-man-story-of-2020-is-here/> [<https://perma.cc/L43F-8R4P>] (“2020 has barely begun and we’ve already got our first ‘Florida Man’ story of the year. A Panama City man is behind bars after he crashed his vehicle into a bar just so he could steal a Dr. Pepper.”).

330. Richard Luscombe, *Florida Man: What Lies Behind the Sunshine State’s Crazy Stereotype*, THE GUARDIAN (May 21, 2019, 2:00 PM), <https://www.theguardian.com/us-news/2019/may/21/florida-man-what-lies-behind-the-sunshine-states-crazy-stereotype> [<https://perma.cc/7Y88-H69V>].

331. Benjamin Rulon Andrew Jr., *supra* note 322 (“Memes tend to live a very short lifespan. In fact, most memes get pretty old after you see [them] a few times . . .”).

332. See, e.g., Peter Cole, *How Journalists Write*, THE GUARDIAN (Sept. 24, 2008), <https://www.theguardian.com/books/2008/sep/25/writing.journalism> [<https://perma.cc/2KY2-ST72>]; Ben Frampton, *Clickbait: The Changing Face of Online Journalism*, BBC NEWS (Sept. 14, 2015), <https://www.bbc.com/news/uk-wales-34213693> [<https://perma.cc/98JA-SY3G>].

333. See, e.g., Associated Press, *supra* note 79.

Law—has arguably received the most attention.<sup>334</sup> People have also highlighted the characteristics inherent to the State of Florida and its residents as factors that, perhaps along with the Public Records Law, allowed Florida Man to flourish.<sup>335</sup> But largely unmentioned is the role that popular culture and the internet play in the spread of trends like Florida Man,<sup>336</sup> without which Florida Man would not exist. In examining the three theories, this Article posits that internet culture, rather than Florida's law or its unique characteristics and residents, is the largest contributor to the widespread and ongoing popularity of the Florida Man meme.

Florida's Public Records Law is undoubtedly strong compared with the open records laws elsewhere in the country<sup>337</sup> and even with FOIA.<sup>338</sup> While all states' laws share some features that aim to allow for easy access to government records, including a presumption that records are open and a broad definition of "record,"<sup>339</sup> the laws also differ in key respects.<sup>340</sup> First, Florida's law recognizes only statutory exceptions to the statute's disclosure requirements, and it lacks a general privacy exception that agencies in other states frequently invoke to deny access to records.<sup>341</sup> Some records that commonly appear in Florida Man stories, such as mugshots, are more readily available to the public in Florida than in other states.<sup>342</sup> Further, Florida's process for obtaining government records is requester-friendly, requiring little information from requesters as well as thorough follow-through from records custodians in their responses.<sup>343</sup> If a custodian denies a request, Florida allows the requester more flexibility in the pursuit of remedies and imposes harsher punishments on custodians who violate the law than other states impose.<sup>344</sup> Finally, several public and non-governmental resources exist in Florida that strive to increase access to government records and promote open government as one of Florida's greatest attributes.<sup>345</sup>

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334. See *supra* notes 103-107 and accompanying text.

335. See *supra* note 108 and accompanying text.

336. See *supra* note 111 and accompanying text.

337. See *supra* Part II.B (Variables Across Open Records Laws).

338. See *supra* note 88.

339. See *supra* Part II.A (Commonalities Among Open Records Laws).

340. See *supra* Part II.B (Variables Across Open Records Laws).

341. See *supra* Part II.B.1.a (Exceptions).

342. See *supra* Part II.B.1.a (Exceptions).

343. See *supra* Parts II.B.2-3 (Making Requests; Responses to Requests).

344. See *supra* Part II.B.4 (Appeals and Violations).

345. See *supra* Part II.B.5 (Resources for and Attitudes Toward Access to Public Records).

But considering the simple formula for a Florida Man story—usually an arrest record or incident report, perhaps coupled with a mugshot, plus a journalist willing to write a story on it<sup>346</sup>—Florida’s edge over other states in keeping records open to the public has less of an impact on Florida Man than commentators have suggested. Florida’s Public Records Law leaves little doubt that reporters who request arrest records or incident reports will promptly receive them.<sup>347</sup> Thus, no matter how limited the exceptions to the law,<sup>348</sup> robust the denial appeals process,<sup>349</sup> harsh the punishments for violations,<sup>350</sup> or numerous the organizations dedicated to open government,<sup>351</sup> journalists would be able to obtain Florida Man material. Similarly, other states’ open records laws provide easy access to police records on arrests and other incidents.<sup>352</sup> While it is true that not all other states allow the same access to mugshots that Florida does,<sup>353</sup> not all Florida Man stories contain mugshots,<sup>354</sup> which minimizes the impact that access to mugshots has on Florida Man.

Perhaps another factor that contributes to Florida Man’s fame are the characteristics of the State of Florida.<sup>355</sup> For example, Florida has more people than almost all other states in the country.<sup>356</sup> But California and New York have more people than Florida does,<sup>357</sup> and there is no similar meme based on the residents of either of those states. Other factors that distinguish Florida—including its diverse population that skews older than other states,<sup>358</sup> the limited access to mental health resources in the state,<sup>359</sup> its warm climate,<sup>360</sup> and its significant alligator population<sup>361</sup>—also fall short of fully explaining how Florida Man has emerged and thrived. These characteristics help provide for an en-

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346. See *supra* note 69 and accompanying text.

347. See *supra* Part II.B.1.b (Treatment of Specific Records: Incident Reports, Arrest Records, and Mugshots).

348. See *supra* Part II.B.1.b (Treatment of Specific Records: Incident Reports, Arrest Records, and Mugshots).

349. See *supra* Part II.B.4.a (Appeals).

350. See *supra* Part II.B.4.b (Penalties for Violations).

351. See *supra* Part II.B.5 (Resources for and Attitudes Toward Access to Public Records).

352. See *supra* Part II.B.1.b (Treatment of Specific Records: Incident Reports, Arrest Records, and Mugshots).

353. See *supra* note 190 and accompanying text.

354. See, e.g., AP NEWS, *supra* note 1; Slisco, *supra* note 12.

355. See *supra* Part II.C.1 (Florida’s Population and Environment).

356. See *supra* note 27 and accompanying text.

357. See *id.*

358. See *supra* note 41 and accompanying text.

359. See *supra* note 53 and accompanying text.

360. See *supra* note 39 and accompanying text.

361. See *supra* notes 31-32 and accompanying text.

vironment that breeds entertaining raw material for Florida Man stories, but the ability to analogize to other states in discussing each of these features of Florida<sup>362</sup> undermines the independent strength of this explanation for Florida Man.

In contrast to the limitations that Florida's Public Records Law and other qualities of the State of Florida have in their ability to explain Florida Man, there is no question about the roles that the internet and popular culture play.<sup>363</sup> Social media platforms are the venues in which the Florida Man phenomenon took off;<sup>364</sup> the platforms even provide additional sources for journalists in reporting Florida Man stories.<sup>365</sup> Social media users were receptive to the phenomenon due to some existing familiarity with Florida as an offbeat place and the pervasiveness of memes in modern-day popular culture.<sup>366</sup> Florida Man's popularity in itself both motivates journalists to write more on Florida Man and inspires internet users to share the meme with their networks, further enhancing Florida Man's popularity.

Florida Man is often the subject of government records. He, as well as his home state, are ostensibly quirky compared with the residents and environments of other states. A successful internet meme has catapulted Florida Man to stardom. Whether hero, superhero, or anti-hero, he is fun to read about, to watch, and to play the games with which he is associated. When all is said and done, however, perhaps "Florida Man" is just a Florida man.

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362. See *supra* Part II.C.1 (Florida's Population and Environment).

363. See *supra* Part II.C.2 (A Cultural Phenomenon).

364. See *supra* notes 63-64 and accompanying text.

365. See *supra* notes 75-76 and accompanying text; *supra* text accompanying note 191.

366. See *supra* notes 31-40 and accompanying text.