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OFFICE OF THE ATTORNEY GENERAL



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DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

August 5, 1993

Mr. John S. Slye
General Counsel, Department of
Health and Rehabilitative Services
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Dear Mr. Slye:

On behalf of the Secretary of the Department of Health and Rehabilitative Services (HRS), you ask substantially the following questions:

- 1) Who are the individuals referred to in s. 415.107(1)(b), F.S.?
- 2) Does investigative information gathered by the Inspector General for the Department of Health and Rehabilitative Services constitute criminal intelligence information which would be exempt from disclosure if the Florida Department of Law Enforcement requests the information?
- 3) If an individual can be identified by information or other descriptions in the reports and that individual's identity must be protected by HRS, must it redact the description which would lead to the identification of that individual?

In sum:

- 1) In view of the purpose of the Adult Protective Services Act, the reference to individuals in s. 415.107(1)(b), F.S., appears to be to those living aged persons or disabled adults whom the act seeks to protect. In light of s. 415.107(4), F.S., prohibiting



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the department from releasing the name of the person reporting the abuse except as provided therein, the name of the person reporting the abuse must be deleted.

2) The contents of an investigative report compiled by the Inspector General for the Department of Health and Rehabilitative Services in carrying out his duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to the Department of Law Enforcement.

3) Section 415.107(1)(b), F.S., appears to allow the redaction of information which, in and of itself, would establish the identity of the individual.

Question One

Section 415.107(1), F.S., provides:

(a) In order to protect the rights of the individual or other persons responsible for the welfare of an aged person or disabled adult, all records concerning reports of abuse, neglect, or exploitation of the aged person or disabled adult, including reports made to the central abuse registry and tracking system, and all records generated as a result of such reports shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by ss. 415.101-415.113.

(b) Except for information identifying individuals, all records involving the death of an aged person or disabled adult as a result of abuse or neglect, including reports to the central abuse registry and tracking system, and all records generated as a result of such reports, shall be released to the public within 10 days after the completion of the investigation.

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Thus, s. 415.107(1)(a), F.S., makes certain HRS reports and records relating to the abuse, neglect or exploitation of aged persons or disabled adults confidential and exempt. Section 415.107(1)(b), F.S., provides a method for opening these records, except for information identifying individuals, when the death of an aged person or disabled adult has occurred as a result of abuse.

While the term "individuals" is expansive, it is necessary in interpreting s. 415.107(1)(b), F.S., to consider the intent and purpose underlying the Adult Protective Services Act (act).¹ As expressed in s. 415.101, F.S., the act seeks to protect persons in this state who, because of age or disability, are in need of protective services.² Such services, however, "should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation."³ (e.s.)

As noted above, s. 415.107(1)(a), F.S., provides for the confidentiality of certain reports or records relating to the abuse, neglect or exploitation of an aged person or disabled adult "[i]n order to protect the rights of the individual or other persons responsible for the welfare of an aged person or disabled adult." The reference to "individual" above would appear to refer to an aged person or disabled adult who may be in need of protective services.

When there has been a death of an aged person or disabled adult as a result of abuse, s. 415.107(1)(b), F.S., provides for the disclosure of otherwise confidential records, except for information identifying individuals. The statute uses the term "individuals" but does not include "other persons responsible for the welfare of an aged person or disabled adult." When a death of an aged person or disabled adult occurs as a result of abuse, neglect or exploitation, there is a strong presumption that the best interests of the aged person or disabled adult and the public interest will be served by full public disclosure.⁴ Moreover, the courts of this state have held that exemptions to the Public Records Law are to be narrowly construed.⁵

In light of the above, and until this matter is legislatively or judicially clarified, it appears that the term "individuals" in s. 415.107(1), F.S., should be narrowly construed to refer to those aged persons or disabled adults whom the act seeks to protect. The name of a deceased aged person or disabled adult

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who has died as a result of such abuse, however, is already subject to disclosure pursuant to s. 415.103(2), F.S. This section provides:

Any person required to report or investigate cases of suspected abuse, neglect, or exploitation who has reasonable cause to suspect that an aged person or disabled adult has died as a result of abuse, neglect, or exploitation shall report his suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report his findings, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

To read s. 415.107(1)(b), F.S., as exempting the name of those aged persons or disabled adults who have died as a result of abuse would be inconsistent with s. 415.103(2), F.S., which makes such information public.

In considering a similar provision regarding autopsy reports of child abuse victims⁹ and the provisions of s. 119.07(3)(h), F.S., which makes the identity of a victim of child abuse confidential, this office concluded that, to harmonize these two provisions, s. 119.07(3)(h), F.S., should be read to apply to the identity of a child whose death results from suspected child abuse. Such a rationale would appear to be applicable here. To harmonize the provisions of s. 415.107(1)(b), F.S., with the public nature of the autopsy report of death, the term "individuals" should not be read to include aged persons or disabled adults whose death results from abuse or neglect.

The reference to "individuals" in s. 415.107(1)(b), F.S., thus would apply to those aged persons or disabled adults who survive and whose identities might be contained in a report investigating abuse, neglect, or exploitation, when a death from such abuse has occurred. Unlike the decedents whose identity has been made public through the autopsy report, the identity of such persons is not generally available.

Section 415.107(4), F.S., prohibits the release of the names of any person reporting adult abuse, neglect, or exploitation to any person other than to HRS employees responsible for adult

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protective services, the central abuse registry and tracking system, or the appropriate state attorney except as provided therein. Accordingly, the name of the reporter of such abuse should be deleted from the report.

Question Two

You have advised this office that the HRS Inspector General has initiated an investigation into the deaths of three elderly persons. The Inspector General's investigation is separate from the protective services investigation into these deaths conducted by HRS. A draft report has been prepared based upon the Inspector General's investigation. This office in an informal opinion has already advised you that the Inspector General's report, which assesses whether HRS procedures have been properly followed and the effectiveness of such procedures, is subject to disclosure.

You state that the Florida Department of Law Enforcement (FDLE) is also conducting a separate investigation. A question has been raised as to whether the HRS Inspector General's report may be kept confidential until such time as FDLE completes its own investigation. You, therefore, ask whether the HRS Inspector General's report qualifies as criminal intelligence information.

Section 119.07(3)(d), F.S., exempts active criminal intelligence and active criminal investigative information from public inspection. "Criminal intelligence information" is defined as information concerning "an identifiable person or group of persons, collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." The term "Criminal justice agency" is statutorily defined to mean:

any law enforcement agency, court or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for purposes of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

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Your inquiry concerns records that were compiled and maintained by HRS. The Department of Health and Rehabilitative Services is not a law enforcement agency or an agency charged with criminal law enforcement duties. Nor does HRS have possession of such information for the purpose of assisting FDLE in carrying out its active criminal investigation. Rather the Inspector General's investigation and resulting report was conducted in carrying out HRS's duty to review program compliance.¹⁰

The exemptions for criminal intelligence and investigative information do not make other public records exempt from disclosure simply because they are transferred to a law enforcement agency.¹¹ Thus, this office in AGO 88-25 stated that public records compiled by the Office of the Capital Collateral Representative (CCR) are not converted into criminal investigative or intelligence information which is exempt from s. 119.07(1), F.S., by the transfer of such records or copies thereof to FDLE. This office, therefore, concluded that unless some exemption from the Public Records Law attaches to such records as they are maintained by CCR, the provisions of s. 119.07(1), F.S., regarding production and copying would apply.

Accordingly, the investigative report compiled by the Inspector General for the Department of Health and Rehabilitative Services in carrying out his duty to determine program compliance is not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because the report or a copy thereof has been sent to the Department of Law Enforcement.

Question Three

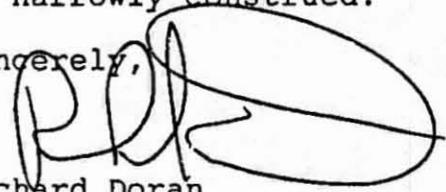
Your third inquiry concerns what constitutes identifying information for purposes of s. 415.107(1)(b), F.S. While this office cannot provide an exhaustive list of information which may be deemed to be identifying information, the language would appear to encompass information personal to the individual. Such information, therefore, would include, personal information such as an individual's name, address, telephone number, social security number or photograph.¹² Similar information regarding relatives might also be deemed identifying information.

In considering this issue, reference may be made to other statutes in which the Legislature has deleted identifying information such as s. 119.07(3)(k), F.S., in which the Legislature has specifically exempted certain types of identifying information of HRS personnel whose duties involve

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the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities. Certain other descriptions may also be included. The determination, however, as to whether certain information may identify an individual in a particular instance is one which must be made on a case by case basis, keeping in mind that exemptions to the Public Records Law are to be narrowly construed.

Sincerely,



Richard Doran
Assistant Deputy Attorney General

RD/tjw

¹ Section 415.101-415.4114, F.S. See, Lowry v. Parole and Probation Commission, 473 So.2d 1248 (Fla. 1985) (where reasonable differences arise as to the meaning or application of a statute, the legislative intent must be the polestar of judicial construction); and see, AMISUB (North Ridge General Hospital, Inc. v. Department of Health and Rehabilitative Services, 577 So.2d 648 (1 D.C.A. Fla., 1991) (appellate courts have duty to honor obvious legislative intent and policy behind enactment).

² See, s. 415.101(2), F.S.

³ Id.

⁴ See, s. 119.07(7)(b)1., F.S. Section 119.07(7), F.S., provides a method in which a person or organization may petition the court for an order opening otherwise closed HRS records that pertain to alleged adult or child abuse, neglect, abandonment or exploitation.

⁵ See, e.g., Seminole County v. Wood, 512 So.2d 1000 (5 D.C.A. Fla., 1987), petition for review denied, 520 So.2d 586. And see, Lorei v. Smith, 464 So.2d 1330 (2 D.C.A. Fla., 1985), petition for review denied, 475 So.2d 695 (Fla. 1985) (the public policy favoring open records must be given the broadest possible expression).

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⁶ Section 415.504(3), F.S., provides:

Any person required to report or investigate cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report his findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in s. 415.51, F.S.

⁷ See, AGO 90-103.

⁸ See, Inf. Op. to John Slye, HRS General Counsel, from Richard Doran, Assistant Deputy Attorney General, dated August 3, 1993.

⁹ Section 119.011(3)(a), F.S. And see, s. 119.011(3)(d), F.S., defining "active."

¹⁰ See, s. 415.103(3)(a), F.S.

¹¹ See, Tribune Company v. Cannella, 438 So.2d 516 (2 D.C.A. Fla., 1983), quashed on other grounds, 458 So.2d 1075 (Fla. 1984), appeal dismissed sub nom., Deperte v. Tribune Company, 105 S.Ct. 2315 (1985), in which the district court held that an assistant state attorney could not withdraw public records from public scrutiny by asserting he had "compiled" the records simply because he had subpoenaed such records. And see, Tober v. Sanchez, 417 So.2d 1053 (3 D.C.A. Fla., 1982), stating that an agency may not avoid its responsibility of producing records by simply transferring documents to another agency or office.

¹² See generally, Webster's Third New International Dictionary Identify p. 1123 (unabridged ed. 1981) ("to establish the identity of").