

DISPOSED

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

NYT MANAGEMENT SERVICES, INC.
d/b/a The Sarasota Herald Tribune,
Plaintiff,

vs.

FLORIDA DEPARTMENT OF REVENUE
and EXECUTIVE DIRECTOR, JIM ZINGALE,
in his official capacity as the Department of
Revenue's custodian of records,
Defendants.

Case No. 2006-CA-0896
Civil Division – Judge Bateman

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DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

**ORDER ON COMPLAINT TO
ENFORCE PUBLIC RECORDS ACT**

THIS CAUSE was considered after notice and hearing at which counsel for the parties were present on the plaintiff's complaint to enforce the Florida Public Records Act pursuant to chapter 119, Florida Statutes and after hearing the argument of counsel and being otherwise advised in the circumstances I find, and it is

ORDERED AND ADJUDGED that pursuant to §193.074, Florida Statutes, the returns are not only exempt from the public record, they and the information contained within are confidential.

Neither counsel for the parties nor this court was able to find any case law interpreting the provision. However, the court is aligned with the Attorney General which in Advisory Legal Opinion, AGO 95-07 said:

Thus, pursuant to the definition promulgated by the department, declarations or written statements filed with

the department pursuant to the revenue laws of this state would be a "return," and therefore . . . would be confidential pursuant to section 193.074, Florida Statutes.

....

While there is no statutory definition of what constitutes a "return," the Florida Department of Revenue (department) has promulgated a rule that defines return
.... [1]

[1] Rule 12-22.002 (5), F.A.C.

....

It is well-settled that the construction of a statute by an agency charged with its administration is entitled to great weight and will not be overturned unless it is clearly erroneous. (citations omitted) (emphasis supplied)

Here, the plaintiff does not seek access to the returns themselves. Rather, it seeks access to a list compiled by the Department of Revenue (Department) from information contained within the returns with the social security numbers and other specific taxpayer identifying information redacted. The stated purpose is to identify possible abusers of the homestead exemption, that is, properties that may be claimed as homestead property in more than one county. The Department's position is that the list to which plaintiff seeks access is compiled from declarations and written statements contained in the returns and as such are confidential and exempt under §193.074, Florida Statutes.

While chapter 119 of the Florida Statutes, known as the Florida Public Records Act, was enacted to promote public awareness and knowledge of government actions in order to ensure the governmental officials and agencies remain accountable to the people, Forsberg v. Housing Authority of the City of

Miami Beach, 455 So.2d 373 (Fla. 1984), there are legislatively recognized exceptions and exemptions. And, the Department bears the burden of proving its right to the claimed exemption. See Woolling v. Lamar, 764 So.2d 765 (Fla. 5th DCA 2000). Toward that end, the Department urges the court that §193.074, Florida Statutes prohibits access even if personal taxpayer identifying information is redacted from the list or document being requested.

On the other hand, plaintiff argues the information is already available on the property appraisers' web sites on a parcel-by-parcel basis and it is merely asking the Department for access to a list it routinely prepares but does not disseminate. And, plaintiff argues, if the court does not agree with its position it is possible that the property appraisers around the state may be in violation of the confidentiality provisions of chapter 193 or other provisions of the Florida Statutes. See, for example, §195.084(1), Fla. Stat. (Breach of confidentiality shall be a misdemeanor of the first degree, punishable as provided by ss. 775.082 and 775.083).

Under the circumstances presented, I agree with the Department and the Attorney General.

As stated earlier and as stipulated by the parties, there is no case on point on the subject. I find, however, there is a case that is instructive.

In WFTV, Inc. v. School Board of Seminole, 874 So.2d 48 (Fla. 5th DCA 2004), the district court noted that while the Florida Public Records Act is to be liberally construed and exemptions are to be narrowly construed, "[I]f information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute," WFTV, Inc., at p. 53, citing at p. 54, Alice P. v. Miami Daily News, Inc., 440 So.2d 1300 (Fla. 3rd DCA 1983), rev. denied, 467 So.2d 697 (Fla. 1985) (confidential information contained in a license application submitted to a state

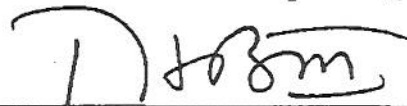
agency was determined not subject to disclosure). The court went on to say, however, that “[I]f records are not confidential but are only exempt from the Public Records Act, the exemption does not prohibit the showing of such information.” WFTV, Inc., at p. 54.

Here, the statute at issue makes the returns not only confidential “in the hands of the property appraiser, the clerk of the circuit court, *the department*, the tax collector, the Auditor General and the Office of Program Policy Analysis and Governmental Accountability, and their employees and persons acting under their supervision and control,” but it exempts them from the public record. Compare §193.114, Fla. Stat., “Preparation of assessment rolls,” and Attorney General Legal Opinion, 2005-04 (the assessment rolls are not exempt from the public record but the tax payers social security number is confidential and exempt and must be excluded) and §195.084, “Information exchange” (section supersedes statutes prohibiting disclosure only with respect to the exchange of information between and among the Auditor General, the Office of Program Policy Analysis and Government Accountability, property appraisers and tax collectors).

Therefore, based on all of the foregoing, I find that the Department has met its burden of proof and persuasion claiming its right to the claimed exemption under §193.074, Florida Statutes. I find further that the plaintiff’s claim that it has a right to access to the requested data, reasonable attorney’s fees, costs and expenses is **DENIED**.

No motion or rehearing or reconsideration of this order is allowed.

DONE AND ORDERED at Tallahassee, Florida on April 25, 2006.



THOMAS H. BATEMAN III
Circuit Judge