

12/4/91

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR HERNANDO COUNTY, FLORIDA  
CIVIL DIVISION

PCA

TIMES PUBLISHING COMPANY,  
a Florida corporation,

Plaintiff,

v.

CASE NO. 91-429 CA 01

CORRECTIONS CORPORATION OF  
AMERICA, a Tennessee corporation  
doing business in the State of  
Florida,

Defendant.



FINAL JUDGMENT

THIS CAUSE came before the Court for Final Hearing on October 1, 1991.

The Plaintiff Times Publishing Company ("the Times") originally sued Defendant Corrections Corporation of America ("CCA") in a three-count Complaint, seeking CCA's court-ordered compliance with Chapter 119 of the Florida Statutes (1989), commonly known as the Florida Public Records Act. The Court has previously disposed of Count II of the Times Complaint, which sought a writ of mandamus directing CCA to produce certain records, by issuing such a writ. Count III of the Times' Complaint, seeking an injunction requiring CCA to comply with the records disclosure provisions of Chapter 119, was disposed of by CCA's stipulation to such an injunction. However, CCA continued to contest that it was "acting on behalf of" Hernando County, the finding that triggers application of the Act, as is more fully explained below. Thus, this cause proceeded to non-jury trial on Count I of the Times'

Complaint, which sought a declaratory judgment determining whether CCA is acting on behalf of Hernando County and as such is required to comply with the provisions of Chapter 119 and whether CCA may lawfully condition the public's inspection of Hernando County Jail employee records on employee consent or the Times' indemnification of CCA for liability resulting from release of the records. The specific issue tried before the court was whether CCA is "acting on behalf of" Hernando County as that term is used in Section 119.011(2) of the Florida Statutes (1989).<sup>1</sup>

Having considered the pleadings and papers on file, the documentary and testimonial evidence presented at trial, the final arguments of counsel, and being otherwise duly advised in the premises, the Court finds as follows:

1. The Times is a Florida corporation duly organized and doing business in Hernando County, Florida, and is the publisher of the St. Petersburg Times, a daily newspaper. CCA is a Delaware corporation also duly organized, registered to do business in Florida, and doing business in Hernando County, Florida. CCA operates and maintains the Hernando County Jail pursuant to contract with the Hernando County Board of County Commissioners.<sup>2</sup>

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<sup>1</sup> In all three counts of its Complaint, the Times requested an award of its attorneys' fees and costs. The court has reserved and continues to reserve jurisdiction to determine and make such awards.

<sup>2</sup> The Court's use of the term "contracts" in this Judgment refers to the contract effective from March 1, 1988 through September 30, 1991 and the contract effective from October 1, 1991 through September 30, 1996. Both were received in evidence and their dispositive provisions are the same.

entity and the public agency, the private entity is acting on behalf of the public agency for Public Records Act purposes. Sarasota Herald-Tribune v. CHC, supra; Fox, supra; Schwartzman, supra. The appellate courts have recognized that it is hard to isolate an exact list of factors to be considered in cases such as this, and the analysis to a large extent must be undertaken on a case-by-case basis. Sarasota Herald-Tribune v. CHC, 582 So.2d at 733. Accordingly, the Court has considered those factors identified as significant in appellate court opinions cited above and has also examined the unique circumstances of this case for evidence bearing on the question whether there is a "significant level of involvement" between CCA and Hernando County.

4. First, the Court finds that CCA is performing an essentially governmental function. It is difficult for the Court to conceive of a function more integrally related to the purpose and responsibility of a county government than that of holding in custody, caring for, and controlling persons arrested by county and other duly authorized law enforcement authorities and persons serving post-conviction sentences. Indeed, a prisoner's escape from the CCA-operated jail or one of its corrections officers carries the same penal consequences as escape from any other government-operated jail or government-employed corrections officer in this State. See § 951.062(5), Fla. Stat. (1989); § 944.40, Fla. Stat. (1989). Clearly, CCA, pursuant to its contracts with the County, performs the functions the County is obliged to perform with respect to persons it arrests. The Court finds the towing

functions performed at the direction of law enforcement officials by Alligator Towing and Recovery, Inc. in the Fox case, if not directly on point, at least analogous to those functions performed by CCA. Accordingly, the Court finds that CCA performs an essentially governmental function.

5. In addition, as more fully described below, the Court finds that the provisions of CCA's contracts with Hernando County to operate and maintain the jail, along with the practices of the contract parties established by the evidence and testimony in this case, demonstrate a significant level of involvement between CCA and the County.

6. CCA conducts its activities on real property owned by Hernando County's alter ego, the Hernando County Public Facilities Finance Authority, utilizing the jail structures and facilities owned and paid for by the County and the Finance Authority through the issuance of County-guaranteed bonds. The equipment CCA uses is also in the main provided and paid for by the County.<sup>3</sup> The County pays ad valorem tax assessments on the property and for property insurance, and remains responsible for the costs of maintenance and repair to major systems of the jail, such as the air conditioning and plumbing systems. CCA is paid for its services by appropriation from the General Revenue Fund of Hernando County, a fund

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<sup>3</sup>/ According to the CCA/County contract and memoranda in evidence, the County was to provide CCA with a "fully equipped jail" and apparently, negotiations took place over what equipment was needed to make the jail "fully equipped." The parties' contracts also allow CCA to provide at its own expense and use in the Hernando County Jail other equipment it deems appropriate, beyond that provided by the County.

comprised of ad valorem tax monies paid by Hernando County property owners, various shared-tax-revenue monies Hernando County receives from the State of Florida, and various other taxes and collections.<sup>4</sup> In addition to the above, the County provides to CCA, at the County's interdepartmental rates, petroleum products for use in CCA's vehicles County-owned two-way radios. The County also paid CCA a \$45,000 lump sum for unspecified "non-recurring start-up costs" associated with the opening of the New Hernando County Jail. When the County-CCA contractual relationship is terminated, all of this property and these facilities remain in the ownership of the County, and CCA will no longer have the right to occupy the jail.<sup>5</sup> Thus, CCA is vested with stewardship and control over both a substantial amount of public assets and the County's prisoners.

7. A number of the provisions of CCA's contracts with Hernando County mirror those contained in Alligator Towing's contract with the City of Fort Myers as described in the Second District's opinion in Fox. Specifically, the contracts provide that CCA is the exclusive operator of Hernando County's jail and except in instances of over-crowding, CCA is the exclusive jailer for prisoners of Hernando County; that CCA must take prisoners into

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<sup>4</sup> The contracts provide for CCA to assist the County in determining for each budget year the size of the monetary appropriation the County Commission should make to fund the contract. The evidence shows that the County has paid CCA for its services more than \$3.5 million dollars over the last three years, exclusive of reimbursements to CCA for equipment and repairs purchases.

<sup>5</sup> The extra equipment CCA is permitted to provide at its own expense remains its own property and is to be removed from the jail upon termination of the parties' relationship.

custody in accordance with the directions of law enforcement officials; that CCA must maintain specified amounts of general liability and automobile insurance coverage for tort, civil rights, and other injury claims, along with insurance for workers' compensation claims and unemployment compensation claims with the County named as a co-insured; that CCA is responsible for fingerprinting, photographing, booking, feeding, caring for and controlling County prisoners, and in some circumstances for transporting them; that CCA must maintain certain forms and records, to which it must allow the County access; and that CCA must allow the County access to the jail facilities for inspection.

8. In addition to these facts, the evidence reflects other facts, not present in the Fox case, which establish a significant level of involvement between CCA and Hernando County. The parties' contracts provide for a County-employed and County-salaried Contract Monitor, who according to the testimony of Jail Administrator Brown has free access to the jail and its records at all times, "any hour of the day or night." The Contract Monitor visits the jail on a daily basis, receives daily reports on "almost everything that happens" from Jail Administrator L. T. Brown, and reports back to Hernando County officials, in addition to giving monthly reports concerning the jail before the County Commission, just as all other departments of County government do. The volume of correspondence and memoranda in evidence indicates that CCA and the County communicate regularly, some of the time through Contract Monitor R. C. Henry and some of the time directly between Jail Administrator L.

T. Brown and County Administrator Charles Hetrick, concerning equipment and repairs needed for the jail, problems in the jail facilities, and other jail management issues. In addition to daily monitoring by R. C. Henry and regular reporting and communication with the County Administrator and through R. C. Henry with the County Commission, the jail operations and prisoner care for which CCA is responsible are monitored by a corrections board, made up of local criminal justice system officials.

9. Also pursuant to the parties' contracts and as allowed by state statute, L. T. Brown, the Jail Administrator appointed and employed by CCA with review and comment by the County, is the Chief Corrections Officer of Hernando County, and vested in him are the same duties, powers and responsibilities enumerated in the Florida Statutes applicable to government-employed Chief Corrections Officers. These duties, powers and responsibilities include significant authority over prisoner control and discipline. Furthermore, all CCA-employed corrections officers must meet the same eligibility and hiring criteria as are government-employed corrections officers and are vested with the same authority to use deadly and non-deadly force against prisoners as government-employed corrections officers.

10. The County's contracts with CCA permit CCA to house prisoners of other government agencies in the Hernando County Jail when the County does not need the space for its prisoners. But as a further indication of the level of involvement between the parties, the contracts also provide that the County itself will

enter into contracts with other government agencies if necessary for CCA to be able to house other governments' prisoners. Furthermore, the evidence shows that CCA provides detailed yearly income and expense reports to the County. The parties' contract even specifies the level of shareholder equity CCA must maintain, the failure to do so constituting a default under the contract. In sum, in light of all of the testimony and documentary evidence adduced at trial, the Plaintiff has established that given the "totality of the factors" making up CCA's and the County's relationship with one another, CCA is "acting on behalf of" the County for purposes of the Public Records Act.

11. However, the Court specifically notes that it does not find that CCA is the "alter ego" of the County or that the facts establish a common law agency relationship such that Hernando County would be liable in tort or under the civil rights laws or under some other legal theory for the acts or omissions of CCA. The latter question is not before the Court and the Court expresses no opinion on it. However, the Court also notes that such findings are not integral to the determination made here, i.e., that CCA is "acting on behalf of" Hernando County as that term is used in the Public Records Act and defined by the case law interpreting it.

12. The Court further notes that it has considered those factors CCA contends weigh in its favor -- for example, CCA is not a corporation formed by Hernando County, and it does not share with Hernando County an attorney or an interlocking board of directors. These factors, however, are not sufficient to outweigh the other

factors present in this case. See Sarasota Herald-Tribune v. CHC, supra.

13. Finally, the Court's decision in this case is informed by the purpose of and policy considerations behind Chapter 119. The Chapter was enacted so that the public could find out what its government is doing. Browning v. Walton, 351 So.2d 380 (Fla. 4th DCA 1977). The strength and value of the Act lie in the fact that the public can find out what it wants and needs to know to make informed decisions about its government without having to rely on the bare word of government officials as to their conduct of the public's business and use of the public's money. Moreover, the 1975 amendments to the Act, specifically providing for its application to private persons and entities conducting public and governmental affairs, indicate the Legislative recognition that the purpose of the Act easily would be frustrated if the Act applied only to actual government agencies and did not reach those private parties conducting public business. If Chapter 119 were determined not to apply to the type of relationship created between CCA and Hernando County in this instance, then the intent and purpose of the Act would be emasculated. The operation and maintenance of a county jail, owned by the county and funded by public tax dollars, and care and control of the prisoners therein, are clearly matters of serious interest, concern and importance to the public, certainly even more so than the process by which a public utility authority chooses its chief executive, see, e.g., Byron Harless, supra, or how a private towing company performs under its contract

with a municipality, see, e.g., Fox, supra. If the public is to perform its functions in this self-governing society, it must have access to the jail's records. The Public Records Act was meant to and does provide for access to those records.

Based on the foregoing, the Court hereby renders judgment in favor of the Plaintiff, Times Publishing Company, and it is

HEREBY DECLARED, ORDERED, and ADJUDGED as follows:

1. Corrections Corporation of America is "acting on behalf of" Hernando County as that term is used in Section 119.011(2) of the Florida Statutes (1989).
2. As an entity acting on behalf of a public agency as those terms are used in Chapter 119, CCA is subject to the requirements of Chapter 119 of the Florida Statutes. As such, CCA must make available for public inspection and copying upon request its records at the Hernando County Jail in accordance with the provisions of Chapter 119.
3. The Court reserves jurisdiction for enforcement of this order and judgment.
4. The Court further reserves jurisdiction to determine and award attorneys' fees and costs in connection with this action.

DONE AND ORDERED in Chambers at Brooksville, Hernando County, Florida this 4<sup>th</sup> day of December, 1991.

Richard Tombrink, Jr.  
Richard Tombrink, Jr.  
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: THOMAS H. MCGOWAN, ESQ., 535 Central Avenue, St. Petersburg, Florida 32701; and to JOSEPH M. MASON, ESQ., P.O. Box 1900, Brooksville, FL 34605-1900, this 5<sup>th</sup> day of December, 1991.

Barbara Hazelton  
Judicial Assistant  
Secretary