

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

THE SARASOTA HERALD-TRIBUNE,

Plaintiff,

CASE NO.: 2001-CA-002445

vs.

FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES,

Defendant.

FINAL ORDER

In this action, plaintiff The Sarasota Herald-Tribune ("Herald Tribune") seeks injunctive or mandamus relief to enforce the provisions of Chapter 119, Florida Statutes by compelling the defendant Department of Children and Families ("Department" or "DCF") to allow the Herald Tribune to inspect and copy certain records and data in the Department's custody. The Department maintains that any records not already provided to the plaintiff are confidential under applicable law and such confidentiality has not been effectively waived or otherwise negated. Having considered the complaint, the answer and affirmative defenses, the plaintiff's reply, and having heard evidence and legal argument at the final hearing held on December 14, 2001, the Court finds as follows.

On May 2, 2001, Herald Tribune reporter Kelly Cramer submitted a written Public Records Act request to the Administrator of Florida State Hospital, as the custodian of certain records regarding the Mentally Retarded Defendant Program ("MRDP").¹ The request sought names,

¹According to the Complaint, the MRDP is operated by DCF and is based at Florida State Hospital. It is a forensic facility that serves people who have been charged with felonies. Defendants are sent to MRDP by judges who have found those defendants incompetent to stand

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county of origin, case numbers, charges, and other specific identifying data about particular MRDP participants.

On May 3, 2001, John Perry, counsel for the Department, responded to the public records request. Mr. Perry asserted that individual participants' records were confidential and exempt from the provisions of section 119.07(1) pursuant to sections 916.107(8) and 393.13(4)(j), Florida Statutes. Mr. Perry also sought more specifics regarding the Herald-Tribune's request for general information about the MRDP and informed the reporter that there were costs involved in reproducing large quantities of documents. Negotiations continued between the DCF and Herald-Tribune regarding statistical data and general information, but the Department maintained that the identifying information about individual participants in its programs remained confidential, despite the Herald-Tribune's argument that the Department had made this information public by filing it in court proceedings in various courts throughout the state.

Pursuant to section 393.13(4)(j), Florida Statutes, the central records of persons determined eligible for developmental services by the Department are confidential and exempt from the provisions of section 119.07. Only the clients or their legal guardians have the power to waive the confidentiality of the central records. This right of confidentiality belongs to the client, and DCF has no authority to waive that confidentiality. In addition, the clinical records of persons who are mentally ill retarded, or autistic and have been committed to the Department under Chapter 916, Florida Statutes are confidential pursuant to section 916.107, and exempt from the provisions of section 119.07(1) and section 24(a), Art. I of the Florida State Constitution. Section 916.107

trial and who need treatment to become competent to stand trial. (Complaint ¶¶ 6-10.) Presumably, the Program handles persons committed to the Department's custody pursuant to Chapter 916, Florida Statutes.

protects the confidentiality of those records in their entirety, and chapter 119 does not grant authority to compel production of pieces of those files that have become part of public court records. The fact that some records have been filed in various courts around the state does not convert them into public records. State v. Buenano, 707 So. 2d 714 (Fla. 1998); City of Riviera Beach v. Barfield, 642 So. 2d 1135 (Fla. 4th DCA 1994).

The second area of dispute concerns specific information DCF has provided. On September 6, 2001, the Herald-Tribune requested the names, race description, county of commitment, charges, and other specific data on persons admitted to the Seguin and Pathways programs. DCF has provided the Plaintiff printed-out lists showing the initials, race, county of commitment, criminal charges, and date of arrival of some defendants. It would not provide the names, placement, and dates of release. DCF maintains that it redacts from the data "direct identity information," or other information which would allow for the client's identification. (Aff. Def. I, ¶ 5.) DCF contends that when it previously released abstracted information, Plaintiff was able to determine the patients' identities. (Answer ¶ 55.)

The Plaintiff contends that the data requested includes "information that is consistently and regularly disclosed in open court," and that the information in DCF's database "is not part of any defendant's 'clinical record,' or 'central record,'" and that this information is not exempt from public records disclosure by 393.13(4)(j) or 916.107(8), Florida Statutes.

The court finds, as a matter of law, that pursuant to section 393.13(4), Florida Statutes, each client's central record is confidential and exempt from the provisions of section 119.07. Only the clients or their legal guardians can waive the confidentiality of their central records. As previously stated, this right of confidentiality belongs to the client, and DCF has no authority to waive that

confidentiality. Section 393.13(4)(j)2.d. provides that information in the client's records "may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of the individuals." The information that DCF has provided has been properly abstracted to protect the identity of the individuals involved. Pursuant to section 916.107, Florida Statutes, the clinical record is confidential and exempt from the provisions of section 119.07(1) and Article I, section 24(a) of the Florida State Constitution. Section 916.107 protects the confidentiality of those records in their entirety, and chapter 119 does not grant authority to compel production of pieces of those files that have become part of public court records. Finally, section 916.107(8)(a)4. provides that "such clinical records may be released: For statistical and research purposes if the information is abstracted in such a way as to protect the identity of the individuals." The information that DCF has provided has been properly abstracted to protect the identity of the individuals involved.

The third area of dispute concerns death records. The Plaintiff seeks "all records concerning the death of any [MRDP, Pathways, or Seguin] participant." (Compl. ¶ 60.). DCF objected supplying this information due to its confidentiality. The court finds, as a matter of law, that pursuant to section 382.008(6), Florida Statutes, all information relating to the cause of death is confidential and exempt from chapter 119.07. Further, pursuant to section 393.13(4), client records are confidential and exempt from the provisions of section 119.07. Only the clients or their legal guardians can waive the confidentiality of their central records. This right of confidentiality belongs to the client, not DCF, and DCF has no authority to waive that confidentiality. Pursuant to section 916.107, the clinical record is confidential and exempt from the provisions of section 119.07(1) and Article I, section 24(a) of the Florida State Constitution. This provision protects the confidentiality

of those records in their entirety, and chapter 119 does not grant authority to compel production of pieces of those files that have become part of public court records. While some documents might be obtained from another source such as a clerk of court, DCF is the only named defendant in this cause.

IT IS THEREFORE

ORDERED and ADJUDGED that Plaintiff's request for injunctive and mandamus relief on all grounds is DENIED.

DONE AND ORDERED this 8 day of April, 2002.



NIKKI ANN CLARK
Circuit Judge

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