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IN THE CIRCUIT COURT FOR THE  
11TH JUDICIAL CIRCUIT, IN AND  
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 92-17803 (01)

UNITED TEACHERS OF DADE, )  
FEA/UNITED, AFT, LOCAL )  
1974, AFL-CIO and UNITED )  
OFFICE PERSONNEL OF DADE )  
FEA/UNITED AFT, LOCAL 1974, )  
AFL-CIO. )

Petitioners, )

DADE COUNTY SCHOOL )  
ADMINISTRATORS ASSOCIATION, )  
INC., )

Intervenor, )

vs. )

SCHOOL BOARD OF DADE COUNTY, )  
FLORIDA, DADE COUNTY PUBLIC )  
SCHOOLS, )

Respondents. )

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FINAL ORDER DENYING VERIFIED PETITIONS FOR  
DECLARATION OF RIGHTS AND INJUNCTIVE RELIEF  
FILED BY PLAINTIFFS UNITED TEACHERS OF DADE AND  
UNITED OFFICE PERSONNEL AND  
BY INTERVENOR DADE COUNTY SCHOOL ADMINISTRATORS

THIS CAUSE came on to be heard on November 17 and 19, 1992, on the Verified Petitions for Declaration of Rights and Injunctive Relief (the "Verified Petitions") filed by Plaintiffs United Teachers of Dade and the United Office Personnel of Dade, and Intervenor Dade County School Administrators (collectively, the "Plaintiffs/ Administrators"). The Court held a half-day evidentiary hearing during which the director of the Special

Investigation Unit, and various teachers and administrators presented testimony. The Court also reviewed affidavits, deposition testimony and stipulations agreed to by the parties/intervenors, heard argument of counsel, and reviewed memoranda of law and applicable legal authorities. Having reviewed and considered all arguments, memoranda and the record in this case, the Court makes the following findings of fact and conclusions of law:

I. INTRODUCTION

1. The Verified Petitions filed by Plaintiffs/Administrators seek to enjoin disclosure of the home addresses, home telephone numbers and social security numbers with respect to certain school personnel. The Verified Petitions assert arguments based upon: (a) an equal protection challenge; (b) an alleged right to privacy; and (c) public policy grounds. The Plaintiffs/Administrators have standing to bring this action, but for the reasons discussed herein, Plaintiffs/Administrators' Verified Petitions are hereby denied.

2. The records requested in the memorandum attached as Exhibit A to Plaintiffs' Verified Petition (the "Requested Records") are "public records" subject to inspection and copying under Florida's Public Records Act, Chapter 119 (the "Public Records Act"). Nondisclosure is permitted only if there is an applicable statutory exemption. There is no specific statutory exemption which renders the home addresses, home telephone numbers

and social security numbers of school personnel exempt from inspection or disclosure. See, State ex rel. Veale v. City of Boca Raton, 353 So.2d 1194 (Fla. 4th DCA 1978).

3. The Court is troubled by the testimony presented by various teachers and administrators, and is sympathetic to the plight of school personnel who face increasing violence in the schools. However, the issue here is neither school violence nor sympathy for school personnel. Rather, the only issue is whether this Court can create an exemption from the Public Records Act for teachers, clerical persons and administrators; and the law is clear that the Court cannot. Only the Legislature can create such an exemption. Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979); Tribune v. Cannella, 458 So.2d 1075, 1079 (Fla. 1984) ("The Legislature has placed the books on the table; only it has the power to alter the situation."); City of North Miami v. Miami Herald Publishing Co., 468 So.2d 218, 219 (Fla. 1985).

## II. PLAINTIFFS'/ ADMINISTRATORS' EQUAL PROTECTION CHALLENGE

1. Plaintiffs/ Administrators have asserted that the Public Records Act is unconstitutional, either facially or as applied, if read to require the provision of home phone numbers, home addresses and social security numbers of their members, while exempting disclosure of the same information regarding those persons enumerated in Section 119.07(3)(k), Florida Statutes (such as law enforcement persons, judges, firefighters and certain HRS workers) ("Section 119.07(3)(k)").



2. The Court rejects Plaintiffs'/ Administrators' equal protection argument, and finds the Public Records Act to be constitutional, both facially and as applied. The test as to whether or not a particular statutory classification affords equal protection under the law is the "conceivable rational basis" test set forth in The Florida School Activities Association, Inc. v. Thomas, 434 So.2d 306, 308 (Fla. 1983). Case law is clear that the Court shall only inquire whether it is conceivable that the regulatory classification bears some rational relationship to a legitimate state purpose; further it is the burden of the party challenging the statute to show there is no conceivable factual predicate which would rationally support the classification under attack. Plaintiffs/ Administrators have made no such showing here. For example, the Court has no difficulty concluding there is a rational basis for treating law enforcement personnel differently. Where as here, the challenging party does not meet its burden, the statute is deemed to have complied with the principles of equal protection, and must be sustained.

3. Finally, although Plaintiffs/ Administrators argue the Public Records Act is unconstitutional, the remedy they seek here is to have the Court create an exemption from the Public Records Act for school personnel. This Court does not have such authority. Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979); City of North Miami v. Miami Herald Publishing Co., 468 So.2d 218 (Fla. 1985). The Court may not, under the guise of an equal protection argument, declare the exemption unconstitutional

in such a way as to broaden the exemption to include the school personnel. Rather, were this Court to agree with Plaintiffs/Administrators that Section 119.07(d)(k) fails to afford equal protection, the proper remedy would have been to strike that unconstitutional exemption, and the records of the statutorily exempted employees (including law enforcement personnel, firefighters, and judges) would be subject to disclosure. See Dept. of Revenue v. Magazine Publishers of America, Inc., 17 Fla. L. Wkly. 547, 549 (Fla. 1992).

### III. PLAINTIFFS'/ ADMINISTRATORS' ALLEGED RIGHT TO PRIVACY

1. Plaintiffs/ Administrators assert in their Verified Petitions that school personnel have a right to privacy. However, there is no per se federal constitutional right to disclosural privacy; nor is there such a state right. Shevin v. Bryon, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633 (Fla. 1980); Forsberg v. Housing Authority of the City of Miami Beach, 455 So.2d 373 (Fla. 1984); Michel v. Douglas, 464 So.2d 545 (Fla. 1985). Article I, Section 23, of the Florida Constitution, provides every natural person has the right to be left alone and free from governmental intrusion into his private life; however, the amendment expressly provides that this privacy right "shall not be construed to limit the public right of access to public records and meetings as provided by law." Thus, Chapter 119 is specifically exempted from Florida's constitutional right to privacy. Chapters 119 and 231, Florida Statutes, make it clear

that teacher personnel files are public records, subject to inspection and copying except in limited enumerated instances.

#### IV. PLAINTIFFS'/ ADMINISTRATORS' PUBLIC POLICY GROUNDS

1. Plaintiffs/ Administrators also seek this Court's review of the Public Records Act on public policy grounds. However, Florida law is clear that absent a statutory exemption, this Court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and the damage to an individual or institution resulting from such disclosure. News-Press Publishing Company, Inc. v. Gadd, 388 So.2d 276, 278 (Fla. 2d DCA 1980).

#### V. EXEMPT PERSONNEL AND THE RELEASE OF THE REQUESTED PUBLIC RECORDS

1. Having determined the Requested Records to be public records, the only possible exception to disclosure is the exemption accorded certain persons enumerated in Section 119.07(3)(k).

2. Pursuant to this Court's order of September 25, 1992, Defendant Dade County Public School Board ("DCPS") gave notice to its employees asking each to indicate whether or not he/she was one of the enumerated exempt persons identified in Section 119.07(3)(k). The affidavit of Samuel Blank summarizes the results of DCPS's efforts to date. The record indicates that of approximately 38,000 total employees, over 10,000 employees have claimed an exemption from the application of the Florida Public



Records Act, and over 15,000 employees have failed to respond at all.

3. In that the statutory basis for the claim of exemption under Section 119.07(3)(k) is extremely narrow, it is statistically impossible for over 10,000 employees to be exempt. The Court thus orders:

a. DCPS shall discard the results of the first survey and shall deliver another notice to be posted at work locations advising employees of Florida's Public Records Act and of the limited exemption provided for certain persons under Section 119.07(3)(k). DCPS will require any employee who believes himself/herself to be exempt under Section 119.07(3)(k) to execute an exemption form asserting the reason for such exemption and certifying as to the truth and accuracy of his/her information. All such executed forms claiming the exemption will be retained in the employee's personnel file at the work location.

b. DCPS shall instruct its employees that Section 837.06, Florida Statutes, states that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of a public duty shall be guilty of a misdemeanor of the first degree.

c. Any employee who does not execute and return an exemption form by December 23, 1992, will be deemed to be not exempt under Section 119.07(3)(k), and the Requested Records of such non-exempt personnel shall be released.

d. Defendant DCPS will then timely provide the Requested Records in the manner and as agreed to by DCPS and Intervenor The Miami Herald.

e. This Court shall retain jurisdiction for the purposes of enforcing this Final Order as set forth herein.

Executed in Chambers at Miami, Dade County, Florida, this 30 day of November, 1992.

HERBERT M. KLEIN  
CIRCUIT JUDGE

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Circuit Court Judge

cc: All counsel of record