Records, record of appearances before board

Number: INFORMAL

Date: September 29, 2004

Subject:
Records, record of appearances before board

Mr. Charles Brady
2631 East Oakland Park Boulevard
Suite 110
Fort Lauderdale, Florida 33306

Dear Mr. Brady:

As Chair of the Community Services Advisory Board and on behalf of the members of that board, you ask whether the name or opinion of an assistant city attorney appearing before the board may be redacted from a report prepared pursuant to city ordinance as a record of the discussions and appearances before the board at a duly noticed public meeting.

According to your letter, during a public hearing of the Community Services Advisory Board held in the city commission chambers and in response to the board's request for legal guidance, an assistant city attorney appeared before the board, stated her presence for the record, and provided legal advice to the board. You state that you prepared a report of the meeting as required by city ordinance and submitted the report to the mayor and city council. The assistant city attorney then informed you that her name was exempt from the public records law and that all copies of the report would have to be redacted to have her name removed. She did not, however, state the basis for her statement that her name was exempt from the provisions of Chapter 119, Florida Statutes, and you question whether her name may be deleted from a public record created pursuant to city ordinance.

Section 119.011(1), Florida Statutes, defines "public records" to include:

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."[1]

The Florida Supreme Court has interpreted the above statutory provision to encompass all materials made or received by an agency in connection with the transaction of official business that are used to perpetuate, communicate or formalize knowledge.[2] The Court has further stated that all such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.[3] Thus, the courts of this state have made it clear that the determination as to when a record or portion thereof is exempt or confidential rests with the Legislature.[4]

For example, section 119.07(3)(i)1., Florida Statutes, contains a specific exemption for certain information relating to past and present law enforcement officers, state attorneys, assistant state attorneys, statewide prosecutors and assistant state attorneys. While the statute exempts the home address, telephone number, social security number and photographs of such individuals from public inspection, it does not remove the names of such officers and employees from disclosure. Section 119.07(3)(i)2. and 3., Florida Statutes, however, exempts the names of the spouses or children of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties, or code enforcement officers. Pursuant to section 119.07(3)(i)4, Florida Statutes, an agency that is the custodian of the personal information specified in subparagraphs 1., 2., or 3. and that is not the employer of the specified officer, employee specified in such subparagraphs shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency. As you note, however, the assistant city attorney did not refer to the exemption on which she was relying in order to delete the information.

I would generally note that section 119.07(2)(a), Florida Statutes, requires a custodian of a public record who contends that a record or portion of a record is exempt from inspection state the basis for the exemption, including the statutory citation to the exemption. The statute further provides that the custodian, upon request, state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection.[5] Thus, a custodian seeking to delete information from a public record must be able to point to the exemption on which he or she is relying. You may wish to discuss this matter with the city attorney's office to determine on what basis the assistant city attorney is claiming an exemption.

I hope that the above informal comments may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

---

[1] Effective October 1, 2004, the definition of "Public Record" in s. 119.011(1), Fla. Stat., will be renumbered as s. 119.011(11), Fla. Stat. *See* s. 3, Ch. 04-335, Laws of Fla.

[2] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980).

[3] *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

[4] *See, e.g., Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n. 4 (Fla.

2002) (absent an applicable statutory exception, pursuant to Florida's Public Records Act, public employees as a general rule do not have privacy rights in such records). *Cf., Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003) (party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential and it is of no consequence that a party furnishing information to an agency wishes to maintain the privacy of that information unless such materials fall within a legislatively created exemption to Ch. 119).

[5] *And see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000), in which the court considered an agency's response that it had provided all records except certain information relating to the victim was inadequate because the response "failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption."