

Public Records, engineering reports

Number: AGO 71-243

Date: October 10, 2011

Subject:
Public Records, engineering reports

RE: PUBLIC RECORDS—ENGINEERING REPORTS—COLLAPSE OF PUBLIC BUILDINGS

To: Lyle E. Anderson Jr., Vice Chairman, Broward County School Board, Ft. Lauderdale

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Are inspection reports concerning the collapse of a public building "public records" within the purview of s. 119.011, F. S.?

SUMMARY:

Inspection reports made at the request of, or received by, the school board in connection with its official investigation of the collapse of a school roof are "public records" within the purview of s. 119.011, F. S.

It appears that the inspection reports in question were made in connection with the collapse of a portion of a school building under construction in Broward County. You state that one report was made by a consulting engineer employed by the school board and that the other was made by an engineer employed by the insurance company providing coverage to the roofing subcontractor. The latter report was sent to the school board with a covering letter stating that it was enclosed "for your study and action. . . ."

Section 119.01, F. S., 1971, requires all state, county, and municipal records to be ". . . open for a personal inspection of any citizen of Florida . . ." at all times; and s. 119.011 (added by Ch. 67-125, Laws of Florida) defines "public records" to include all documents, maps, photographs, and the like ". . . made or received pursuant to law or ordinance or in connection with the transaction of official business . . ." by the public body. Presumably, the school board has a legal duty or obligation to investigate the collapse of the roof of the school building; and the reports in question were apparently required to be made in connection with this investigation. In these circumstances it seems clear that the reports in question were "public records" within the purview of the statutory definition as having been ". . . made or received pursuant to law . . ."; and it follows that in the absence of any statute or common-law rule that would make such an official report confidential in nature—*cf.* s. 317.171, F. S. 1969, relating to accident reports—they should be open to public inspection.

This conclusion makes it unnecessary to decide whether the 1967 amendment to Ch.

119—which added the definition of "public records" now appearing in s. 119.011, *supra*—was intended by the legislature as a clarification of the exiting statute relating to public records or as a broadening of the scope of such statute. It might be noted, however, that it has long been held in this state that a public record "is one that is required by law to be kept, that is necessary to be kept in the discharge of a duty imposed by law, or that is directed by law to serve as a memorial and evidence of something written, said or done" *Amos v. Gunn*, Fla. 1922, 94 So. 615. *Accord*: AGO 065-23, quoting with approval from *State v. Brantley*, 201 Ore. 637, 271 P.2d 668, 672, the following"

"A public record, strictly speaking, is one made by a public officer, in pursuance of a duty, the immediate purpose of which is to disseminate information to the public or to serve as a memorial of official transactions for public reference."

Thus, the definition of "public records" to include documents and other memoranda ". . . made or received pursuant to law or ordinance . . ." is merely a restatement of the judicial interpretation of the term "public records" made in such decisions as *Amos v. Gunn*, *supra*. However, it is not unreasonable to conclude that the legislature added to the definition the words "or in connection with the transaction of official business by any agency" for the purpose of including *all* correspondence and reports that were made or received by a public agency in connection with an official transaction, and not just the official document memorializing the transaction, such as a contract, deed, or mortgage. But, as heretofore noted, this question need not be decided in answering your inquiry as to whether the inspection reports concerning the school roof collapse are "public records," since they appear to have been required in connection with the discharge by the board of its legal duty to investigate such collapse.

In any event, I know of nothing that stands in the way of the school board's deciding, as a matter of administrative policy, to allow its records to be examined by the public and the press. It was noted in AGO 065-23, *supra* that the board of county commissioners had the "prerogative" to make a policy declaration as to whether employees under its supervision should make a voluntary disclosure of the details of accidents involving county-owned vehicles of which they have personal knowledge. It would seem that the school board would have the same prerogative insofar as its records are concerns.