Records, removal of information in personnel file

Number: INFORMAL

Date: November 19, 1996

Mr. Larry Duisberg
332 La Solona Avenue
Arcadia, Florida 34266

Dear Mr. Duisberg:

Thank you for considering this office as a source for assistance regarding information contained in your personnel file. Attorney General Butterworth has asked me to respond to your letter.

While this office is precluded from formally commenting upon this issue,[1] the following informal comments are offered in an effort to be of some assistance.

Under Florida's Public Records Law, chapter 119, Florida Statutes, records made or received by a public agency in connection with the transaction of official business are public records and are subject to disclosure in the absence of a statute making such records exempt or confidential. Personnel records of a public agency, like other agency records, are subject to disclosure unless the Legislature has exempted such records or has authorized the agency to adopt rules limiting access to such records.[2]

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure or that the release of the information could prove embarrassing or unpleasant for the employee.[3] The courts, however, have held that an agency must provide an employee with an opportunity for a post termination name clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published.[4]

Section 119.01(4), Florida Statutes, requires agencies to establish a program for the disposal of records without sufficient legal, fiscal, administrative, or archival value pursuant to the retention schedules established by the records and information management program of the Division of Library and Information Services of the Department of State. Section 257.36(6), Florida Statutes, directs agencies to submit to the division a list or schedule of records not needed in the transaction of current business and without sufficient administrative, legal or fiscal significance to warrant further retention by the agency and authorizing the destruction of records by an agency upon approval of the division.

Pursuant to section 257.36(7), Florida Statutes, the division has adopted rules that are binding on all agencies relating to the destruction and disposal of records.[5] Thus, this office has stated that a public agency may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the retention schedule adopted by the public agency and with the consent of the division.[6]

I trust you will understand that the inability of this office to become directly involved in this matter stems from statutory constraints and not from a lack of concern. I hope, however, that the above informal advisory comments which should not be considered as a formal opinion of the Attorney General's Office may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures

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[1] *See* s. 16.01(3), Fla. Stat., and this office's Statement Concerning Attorney General Opinions, copies of which are enclosed. As discussed therein, the Attorney General is statutorily authorized to render opinions only to public officials only on questions relating to their own official duties.

[2] *See Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).

[3] *See Michel v. Douglas, supra; Forsberg v. The Housing Authority of the City of Miami Beach*, 455 So. 2d 373 (Fla. 1984); *News-Press Publishing Company v. Wisher,* 345 So. 2d 646 (Fla. 1977).

[4] *See Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989). *And see Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA), *review denied*, 576 So. 2d 287 (1990).

[5] *See generally* Chs. 1B-24, 1B-26, and 1B-27, Fla. Admin. C. *Cf. L.R. v. Department of State, Division of Archives, History and Records Management,* 488 So. 2d 122 (Fla. 3d DCA 1986), stating that an affected party seeking to challenge an agency's approved records retention schedule may be entitled to a hearing under Ch. 120, Fla. Stat.

[6] *See* Op. Att'y Gen. Fla. 94-75 (1994). *And see* Mills v. Doyle, 407 So. 2d 348, 350 (Fla. 4th DCA 1981), stating that employee grievance records may be disclosed even though classified as confidential in a collective bargaining agreement because "to allow the elimination of public records from the mandate of Chapter 119 by private contract would sound the death knell of the Act."