

Human rights advocacy committees, access of

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The Honorable Howard C. Forman
Senator, District 32
210 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Senator Forman:

You ask whether section 402.165(8)(a)1. and 2. or section 402.166(8)(a)1., Florida Statutes, respectively grant the statewide or district human rights advocacy committee, which is investigating a report of child abuse received by the Department of Health and Rehabilitative Services or by the committee and forwarded to that department, the authority to enter a Department of Juvenile Justice facility or program and access the records of such facility or program.

Section 402.165(8)(a)2., Florida Statutes, provides that the Statewide Human Rights Advocacy Committee shall have

"Access to all client records, files, and reports from any program, service, or facility that is operated, funded, licensed, or regulated by the Department of Health and Rehabilitative Services and any records which are material to its investigation and which are in the custody of any other agency or department of government. The committee's investigation or monitoring shall not impede or obstruct matters under investigation by law enforcement or judicial authorities. . . . Access shall not be granted to records of a private licensed practitioner who is providing services outside agencies and facilities and whose client is competent and refuses disclosure."

A similar provision is contained in section 402.166(8)(a), Florida Statutes, for district human rights advocacy committees.

While the statute provides for the committee's access to records material to the committee's investigation that are in the custody of another governmental agency, it does not provide for access to such facilities. Accordingly, neither section 402.165(8)(a)1. and 2. nor section 402.166(8)(a)1., Florida Statutes, authorize the committee to enter such facilities.

In addition, section 39.045, Florida Statutes, provides for the confidentiality of information obtained by, among others, the Department of Juvenile Justice under that chapter and provides that such information may only be disclosed to those persons or entities enumerated therein. Thus, in the absence of a court order, only those individuals authorized under Chapter 39, Florida Statutes, are entitled to receive confidential records involving juvenile offenders. The human rights advocacy committee is not among those enumerated as authorized to receive such confidential information.

Section 39.045(5), Florida Statutes, however, does permit the release of such information upon order of the court. Section 402.165(8)(a)3., Florida Statutes (and its counterpart, section 402.166[8][a]2., Florida Statutes), grants the committees standing to petition the circuit court for access to client records that are confidential as specified by law. The petition is required to state the specific reasons for which the committee is seeking access and the intended use of such information. The committees, therefore, may petition the court to access such information.

In the absence of a court order or amendatory legislation, however, I am of the opinion that neither the statewide human rights advocacy committee nor the district human rights advocacy committees possess the authority under section 402.165(8)(a) or section 402.166(8)(a), Florida Statutes, to enter a Department of Juvenile Justice facility and access the confidential records of such facility or program.

Sincerely,

Robert A. Butterworth
Attorney General

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