Security systems, public records & meetings

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Subject:
Security systems, public records & meetings

Mr. Craig B. Sherman
Town Attorney
Mr. Frank C. Simone
Assistant Town Attorney
701 Brickell Avenue, Suite 1550
Miami, Florida 33131

Dear Mr. Sherman and Mr. Simone:

We are in receipt of your letter on behalf of the Town of Bay Harbor Islands requesting an opinion regarding the application of the Florida Sunshine Laws to records and meetings relating to security system plans for certain school facilities. Attorney General Pam Bondi has asked me to respond to your question.

As to whether particular records are exempt from disclosure, we direct you to the terms of section 119.071(3)(a)1., Florida Statutes (2017), which we discuss further below. As to the public meetings requirement, we are unable to offer our opinion, as it appears that the eligibility for an exemption depends upon the particular facts the Town proposes to discuss, thus constituting a mixed question of law and fact, which this office does not resolve.[1]

The Town of Bay Harbor Islands and the School Board of Miami-Dade County are parties to a Joint Use Agreement (attached to the opinion request) that allows the School Board to use certain Town property and the Town to use certain facilities of the Ruth K. Broad Bay Harbor K-8 Center. The Town uses the school facilities for after-school activities, summer camps, and winter camps for school-aged children. The Joint Use Agreement specifies the outdoor and indoor School Board facilities that the Town may use, the days and hours of use permitted, and each party's security obligations. Simply stated, during school hours, the School Board is required to provide the security of the outdoor and school facilities. During non-school hours, the Town is required to provide the security of the outdoor and school facilities.

You do not identify the general category of matters related to the security system that the Town proposes to discuss. You state only that the Town intends "to discuss the Town's security system plans for the School Facilities" and that it is your opinion that under the law,

"such meetings may be closed to the public and the records produced from such meetings that directly relate to or that reveal the security system plans discussed in the meetings … as limited to the Town's security obligations, together with the actual security system plans, may be kept free from public access or disclosure."

Your question requires consideration of three general statutes that provide that public meetings and records related to security systems and/or security system plans are confidential and exempt from the Government in the Sunshine laws.[2] The first, section 281.301, was enacted in 1987, and pertained simply to "security systems for any property owned by or leased to the state or any of its political subdivisions[.]"[3] In 1990, the Legislature added to each mention of "security systems," the term "information relating to" security systems, and added to the term "records," a list of formats that could constitute information relating to a security system.[4] The amendment also added that records and meetings held by an agency that related to a security system for privately owned or leased property would be protected from disclosure to the public.[5]

Accordingly, section 281.301(1), Florida Statutes (2017), provides:

(1) Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure.

In 2001, the Legislature created sections 119.071 and 286.0113, Florida Statutes, stating that these provisions were intended to "expand and clarify" the exemptions in section 281.301 for public records and public meetings.[6] The list of exempt records in section 281.301 formed the basis for the new definition of "security system plans" in section 119.071, to which a number of additional kinds of records were added.[7]

Thus, section 119.071(3)(a)1., Florida Statutes (2017), makes the following records confidential and exempt from disclosure:

"(3) SECURITY.—
(a)1. As used in this paragraph, the term 'security system plan' includes all:
a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
b. Threat assessments conducted by any agency or any private entity;
c. Threat response plans;
d. Emergency evacuation plans;
e. Sheltering arrangements; or
f. Manuals for security personnel, emergency equipment, or security training.
2. A security system plan or portion thereof for:
a. Any property owned by or leased to the state or any of its political subdivisions; or
b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this

exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph."

Section 286.0113, Florida Statutes (2017), addressing "general exemptions from public meetings," provides:

"(1) That portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution."

The phrasing of section 286.0113(1), and the statement of legislative intent included in the session law,[8] show that the exemption for public meetings in that provision applies to any portion of a meeting in which a record as defined in section 119.071(3)(a) would be revealed.

Exemptions for Public Records

There is very little case law dealing with records that relate to security systems and security system plans. In *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401 (Fla. 5th DCA 2015), the Fifth District Court of Appeal stated that the statutory language in sections 119.071(3)(a) and 281.301 was clear and unambiguous. The court found that video footage captured by a surveillance system used in public buses was directly related to and revealed information about the security system, and thus was confidential and exempt from public records disclosure. It concluded that, because "[t]he videos, which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system[,]" they clearly fell within the statutory exemptions.[9]

In *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195 (Fla. 2d DCA 2005), the Second District concluded that the names and addresses of persons who applied to the City for security system permits, who were cited for violating a security-alarm ordinance, and/or who were named in law enforcement dispatch reports regarding responses to security alarms, were confidential and exempt from disclosure, pursuant to sections 119.071 and 281.301. The court agreed with Attorney General Opinion 2004-28, in which this office had reached that conclusion in answer to a similar question posed by the City of Palm Bay. We had said in that opinion: "The disclosure of the names and addresses contained in the specified records would necessarily reveal the existence of security systems[,]" contrary to sections 119.071 and 281.301. The court agreed, finding that "disclosure would imperil the safety of persons and property."[10]

In Attorney General Opinion 2001-75, this office characterized section 281.301 as having a "comprehensive scope," providing a "broad exemption from disclosure[.]" We concluded that the exemption covered security plans or security needs assessments that a private entity has provided to, and thus were on file with, a governmental entity such as a law enforcement agency.

Presumably, the Town of Bay Harbor Islands should be able to determine whether records in its possession would come within the protections provided by sections 119.071(3) and 281.301, as outlined by the above judicial and Attorney General opinions.

Exemptions for Public Meetings

In contrast, the question of exemption from public meetings has not been addressed by any court, and has been the subject of only one Attorney General opinion. In Attorney General Opinion 93-86, the Board of Trustees of the John and Mable Ringling Museum of Art asked whether section 281.301 exempted Board meetings from the public meetings law when the board discussed issues relating to the security systems for any property of the Board, public or private. The Legislature had statutorily designated the Ringling Museum as the official art museum of the state.[11] This office concluded that the Board was publicly created and thus subject to the Sunshine Laws, and was therefore encompassed by the protection of section 281.301. The opinion request was concerned with the public or private status of the entity in relation to the exemption, rather than the kinds of matters that would be exempt from discussion in a public meeting. Indeed, this office stated without elaboration that meetings would be exempt "when the board discusses issues relating to the security systems[.]"

It is evident from the statutes that a portion of a meeting in which any security system record as defined in section 119.071(3)(a) would be revealed is exempt from the public meetings law pursuant to section 286.0113(1). Beyond that, the Town must decide on a case-by-case basis whether a proposed discussion would "relate directly to" a security system or to information related to the security system pursuant to section 281.301(1). Each proposed discussion will involve a new set of facts that the government must evaluate, adhering closely to the statutory language.[12]

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

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[1] "Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy." Frequently Asked Questions About Attorney General Opinions, myfloridalegal.com.
[2] Each of the three statutes was amended in the 2018 Legislative Session to apply the same exemptions that now cover security system plans to fire safety system plans. *See* Ch. 2018-146, Laws of Fla.

[3] Ch. 87-355, § 1, Laws of Fla.

[4] Ch. 90-360, § 101, Laws of Fla.

[5] The only discussion in the Staff Analyses of the changes to the statute involved records of private entities that are on file with public agencies. The Committees observed that the provision was intended to correct the fact that, "[i]n many cases, local police departments and sheriff offices have copies of plans for security systems installed in privately owned buildings located within their jurisdictions. Under [then] current law, the public has access to these security system

plans." Staff of Fla. S. Committee on Governmental Operations, HB 2513 (1990) Staff Analysis & Economic Impact Statement (Fla. State Archives), at p. 3. *See also* Op. Att'y Gen. Fla. 2001-75, note 1 and accompanying text re: Staff of Fla. H. Committee on Governmental Operations, HB 2513 (1990) Staff Analysis and Economic Impact Statement (Fla. State Archives) at p. 9.

[6] Staff of Fla. H.R. Select Committee on Security, CS/SB 16-C (2001) Analysis (Fla. State Archives) at p. 1.

[7] Ch. 2001-361, §§ 1-2, Laws of Fla. In 2005, multiple exemptions were transferred from § 119.07(6) to § 119.071, and the exemption for security system plans became subsection 119.071(3). Ch. 2005-251, Laws of Fla.

[8] *See* Ch. 2001-361, §§3, discussing the need for these exemptions from the public record and public meeting requirements in light of the attacks of September 11, 2001. The Legislature found, in part: "If the information in security-system plans is available for inspection and copying, terrorists could use this information to hamper or disable emergency-response preparedness, thereby increasing injuries and fatalities. … Consequently, the Legislature finds that security-system plans and meetings related thereto must be kept exempt and confidential."

[9] *Cent. Fla. Reg'l Transp. Auth. v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401, 405 (Fla. 5th DCA 2015). This office followed the *Central Florida Regional Transportation* case in Op. Att'y Gen. Fla. 2015-06, when we concluded that surveillance video recordings from a security system in Pinellas Suncoast Transit Authority facilities constituted "information which reveals a security system[,]" and thus constituted confidential and exempt records.

[10] *Critical Intervention Servs., Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005).

[11] In 1993, when Op. Att'y Gen. Fla. 1993-86 was issued, the museum was assigned to the Department of State. § 265.26(4), Fla. Stat. (1993). The museum is currently operated by Florida State University. § 1004.45(1)(b), Fla. Stat. (2017).

[12] "Most importantly, while The Florida Public Records Act is to be liberally construed in favor of open government, exemptions from disclosure are to be narrowly construed." *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004). *See also Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974), where the Florida Supreme Court admonished: "When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State."