Disclosure of exempt records by property appraiser

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Subject:
Disclosure of exempt records by property appraiser

Mr. Terry J. Harmon
Legal Counsel to Leon County Property Appraiser
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

RE: PUBLIC RECORDS EXEMPTION – PROPERTY APPRAISER – NOTICE OF CODE VIOLATIONS – whether a property appraiser may release addresses exempt from disclosure under the public records law but not confidential, to the municipal code inspector seeking to provide notice required by statute to alleged violators of local code provisions, pursuant to a statutory notice provision that authorizes notice to the address in the county property appraiser's database. Sections 162.06(2), 162.12(1)(a), and 119.071, Fla. Stat.

Dear Mr. Harmon:

This office has received your inquiry on behalf of the Leon County Property Appraiser, asking the following question:

May a county property appraiser disclose property information from the property appraiser's database that is exempt from inspection under Florida's Public Records Act to a municipality seeking to provide notice to alleged code violators in accordance with section 162.12(1)(a), Florida Statutes?

In sum, it is my opinion that:

A property appraiser may disclose the address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by section 162.06, Florida Statutes.

Under the Local Government Code Enforcement Boards Act, sections 162.01 through 162.13, Florida Statutes, when a code inspector for a county or municipality finds a code violation, the code inspector is required by section 162.06, Florida Statutes, to notify the alleged violator and give him or her time to correct the violation. The statute also requires notice of a hearing before the code enforcement board if the violation is not corrected, notice if there is a repeat violation, and notice if a violation is so serious as to call for an immediate hearing. These notice procedures are critical to ensuring that alleged violators receive due process from the code enforcement board.[1]

In the statute dealing with methods of providing notice under the Act, section 162.12(1), Florida

Statutes, offers a variety of methods. The first method authorized in subsection (1)(a), is by "[c]ertified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or *to the address listed in the county property appraiser's database.*" (e.s.)

You indicate that the Leon County Property Appraiser has traditionally declined to disclose property information to the City of Tallahassee for code enforcement purposes when such information is protected from disclosure under a public records exemption. The City of Tallahassee has informed your office, however, that this policy has interfered with its ability to carry out its duty to provide the statutorily required notices. The Property Appraiser, thus, asks whether it may disclose an exempt address without violating the Public Records Act.

Section 119.071, Florida Statutes, contains multiple exemptions from disclosure under the mandatory access requirement of section 119.07(1), Florida Statutes. Under section 119.071(4)(d)3., Florida Statutes, an agency that is not the employer of, but is the custodian of records pertaining to, one of the persons enumerated in section 119.071(4)(d), Florida Statutes, is required to maintain such person's exemption if the person or his or her employing agency submits a written request to the custodian.[2]

Notwithstanding this, a distinction is made between public records that are "exempt" from disclosure and records that are "confidential."

"If information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute…. If records are not confidential but are only exempt from the Public Records Act, the exemption does not prohibit the showing of such information."[3]

Based upon this distinction, this office has concluded that when there is a statutory or substantial policy need for information that is otherwise exempt from disclosure under the Public Records Act, the information should be made available to the requesting agency or entity.[4]

For example, in Attorney General Opinion 2015-02, this office concluded that the City of Oviedo could disclose information that was exempt, but not confidential under section 119.071(4)(d)2., Florida Statutes – the names of law enforcement officers assigned to undercover duty that were part of a roster of all of the City's law enforcement officers – if the custodian determined there was a statutory or substantial policy need for the disclosure. In Attorney General Opinion 2007-21, this office drew the same conclusion with regard to disclosure of photographs of City of Venice law enforcement officers, which were exempt, but not confidential. And in an informal opinion to the Lake Worth Chief of Police, this office determined that information from the City's personnel files that revealed the home addresses of former law enforcement officers, which was exempt from mandatory disclosure, but not confidential, could be provided to the State Attorney's Office when it was seeking to serve a criminal witness subpoena by mail as authorized by section 48.031, Florida Statutes.[5]

Accordingly, the property appraiser may release an address that is exempt, but not confidential, of an alleged code violator to a code inspector who is seeking to comply with his or her duty under section 162.06, Florida Statutes, to provide notice of a code violation that initiates a

procedure intended to lead to correction of such violation.

The Leon County Property Appraiser asserts that if disclosure of an exempt address is permitted, the exemption would remain in place, because the City is also required to maintain the exempt status of the information. Indeed, there is nothing in Chapters 119 or 162, Florida Statutes, indicating that an exempt address loses its exempt status by being shared with another agency.[6] "[T]he focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands."[7] The purpose for the exemptions in section 119.071, Florida Statutes, is to protect the safety and privacy of certain specified persons and their families.[8] The code inspector's statutory duty to notify an alleged code violator of a violation warrants use of an otherwise exempt address for the limited purpose of providing such notice, and does not authorize further disclosure of the address.

It is my opinion that a property appraiser may disclose addresses that are exempt from public records inspection, but are not confidential, to the code inspector seeking to provide notice of code violations pursuant to section 162.06, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

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[1] *See, e.g., Massey v. Charlotte County*, 842 So. 2d 142 (Fla. 2d DCA 2003).

[2] *See* Ops. Att'y Gen. Fla. 14-07 (2014), 10-37 (2010), and 05-38 (2005).

[3] *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

[4] *See* Ops. Att'y Gen. Fla. 90-50 (1990); Inf. Op. to Hon. Don R. Amunds, Chair of Okaloosa Bd. of County Commissioners (June 8, 2012).

[5] *See* Inf. Op. to Lee Reese, Chief of Police (April 25, 1989).

[6] *See Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) ("[I]f the State has access to information that is exempt from public records disclosure due to confidentiality or other public policy concerns, that information does not lose its exempt status simply because it was provided to the State during the course of its criminal investigation.").

[7] *Id.*

[8] *See Rameses, Inc. v. Demings*, 29 So. 3d 418, 421 (Fla. 5th DCA 2010) ("[T]he Public Records Act is construed liberally in favor of openness, and exemptions from disclosure are construed narrowly and limited to their designated purpose.").