Security Systems -- Video Tapes -- Public Records

Number: AGO 2015-06

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Subject:
Security Systems -- Video Tapes -- Public Records

Mr. Alan S. Zimmet
General Counsel for Pinellas
Suncoast Transit Authority
One Tampa City Center, Suite 2700
Tampa, Florida 33601

RE: SECURITY SYSTEMS – VIDEO SURVEILLANCE TAPES – PUBLIC RECORDS – video tapes from surveillance cameras are confidential and exempt from public inspection. ss. 281.301 and 119.071, Fla. Stat.

Dear Mr. Zimmet:

The Suncoast Transit Authority (PSTA) asks the following question:

Are surveillance video recordings from PSTA facilities exempt from public disclosure pursuant to sections 119.071(3)(a) and 281.301, Florida Statutes (as part of a security system plan), and section 119.071(2)(d), Florida Statutes (as information revealing the surveillance techniques or procedures of an agency)?

In sum:

Surveillance tapes from a security system for a public building constitute information which reveals a security system which is confidential pursuant to sections 119.071(3)(a) and 281.301, Florida Statutes.

Chapter 119, Florida Statutes, Florida's Public Records Law, provides a right of access to the records of state and local governments as well as private entities acting on their behalf.[1] This right of access applies to all materials made or received in connection with the conduct of official business, when such materials are used to perpetuate, communicate, or formalize knowledge.[2] All such materials are open for inspection and copying, unless the Legislature has exempted them from disclosure.[3]

Clearly, video surveillance recordings created in the course of official business of the PSTA would be public records.[4] Your question, however, implicates the exemptions for security systems and surveillance techniques contained in sections 281.301 and 119.071, Florida Statutes.[5]

Section 281.301, Florida Statutes, provides:

"Security systems; records and meetings exempt from public access or disclosure.—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." (e.s.)

This exemption was clarified and recreated in section 119.071, Florida Statutes, during the 2001 Legislative Session.[6] Section 119.071(3)(a)2., Florida Statutes, provides:

"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 any agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution."

As used in this section , the term a "security system plan" includes "*all* . . . [r]ecords, *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*[.]"[7] (e.s.)

These provisions were previously addressed by this office when asked whether the names and addresses of applicants for security system permits from a city's building department, as well as the names and addresses of persons or businesses cited for false alarms and addresses where false alarms were reported, were public records open to inspection and copying. In Attorney General Opinion 2004-28, this office cited the Legislature's specific finding of a public necessity for the exemption in section 119.071, Florida Statutes, to ensure public safety, before concluding that the names and addresses of applicants for permits to install security systems would be information which would reveal the existence of a security system and, therefore, would be exempt from public disclosure.

The Second District Court of Appeal, in *Critical Intervention Services, Inc. v. City of Clearwater* ,[8] cited with approval the discussion in Attorney General Opinion 2004-28, when it addressed whether the identity of residential and business alarm permit holders was subject to disclosure. The city relied upon sections 281.301 and 119.071, Florida Statutes, to deny access to the information. The court found that the plain language of the statutes makes confidential all records revealing a security system and stated that disclosure of such information "would imperil the safety of persons and property."[9]

More recently, the Fifth District Court of Appeal in *Central Florida Regional Transportation Authority d/b/a Lynx v. Post-Newsweek Stations, Orlando, Inc.*,[10] considered whether security tapes from cameras installed on transit authority buses were confidential as revealing the security system. Citing the provisions in section 281.301, Florida Statutes, which state records

that directly relate to or reveal information about security systems are confidential, the court concluded that the video footage captured by the bus camera "directly relates to and reveals information about a security system." The court found that the videos "which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system[,]" and, therefore, are confidential and exempt from public inspection.

Similarly, a surveillance tape from the cameras installed at the transit authority's facilities is information which would reveal the existence of a security system. As such, it is my opinion that the surveillance tapes which are made by a security system, while public records, are confidential and exempt from the disclosure requirements of the Public Records Law pursuant to sections 281.301 and 119.071, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] *See* s. 119.01(1), Fla. Stat., setting forth the general state policy on public records, and s. 119.011(2), Fla. Stat, defining "[a]gency" to include "any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[2] *And see Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980) ("public records" encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge).

[3] *See Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

[4] *See* s. 119.011(12), Fla. Stat, defining "Public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

[5] While your question includes s. 119.071(2)(d), Fla. Stat., it would appear that the provisions in subsection (2) of the statute relate to undercover law enforcement activities and you have not indicated that the surveillance cameras within the PSTA facility are used for such purposes.

[6] *See* s. 1, Ch. 2001-361, Laws of Fla.

[7] Section 119.071(3)(a)1., Fla. Stat.

[8] 908 So. 2d 1195 (Fla. 2d DCA 2005).

[9] 908 So. 2d at 1197.

[10] Case No. 5D14-360, January 30, 2015.