Public Records -- Emergency Calls -- Voice Recordings

Number: AGO 2015-01

Date: January 30, 2015

Subject:
Public Records -- Emergency Calls -- Voice Recordings

The Honorable Deryl Loar
Sheriff of Indian River County
4055 41st Avenue
Vero Beach, Florida 32960

Attention: Major James G. Harpring

Dear Sheriff Loar:

You ask the following question:

Is the recording and sound of a voice of the caller in an E911 call requesting emergency service considered "information which may identify any person" which is made confidential by section 365.171, Florida Statutes?

In sum:

While section 365.171(12), Florida Statues, makes confidential information obtained by a public agency which may identify a person requesting emergency services or reporting an emergency in an E911 call, there is no clear indication that the Legislature intended to include the sound of a person's voice as information protected from disclosure to the public at large.

Florida's Public Records Law, Chapter 119, Florida Statutes, provides a right of access to the records of state and local governments, as well as private entities acting on their behalf.[1] For purposes of the law, the term "public records" is defined to include

"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."

The only exceptions to the requirements of the Public Records Law are those established by general law or by the Constitution.[2] There is no question that the sound recording of an E911 call is a public record for purposes of the Public Records Law.[3] Section 365.171(12)(a), Florida Statutes, however, provides:

"Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals

the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. . . ."

Prior to its amendment in 1990, the statute, then section 365.171(15), Florida Statutes, merely provided confidentiality for information "which reveals the name, address, or telephone number of any person requesting emergency service or reporting an emergency by accessing an emergency telephone number '911' system[.]"[4] Relying on this language, it was concluded in Attorney General Opinion 90-43 that only that portion of the voice recording of a "911" call relating to the name, address, and telephone number of the person calling the emergency telephone number "911" to report an emergency or to request emergency assistance is exempt from the disclosure requirements of Chapter 119, Florida Statutes. Thus, the opinion concluded that the voice recording of a "911" call is subject to disclosure once the name, address, and telephone number of the caller have been deleted.

Following issuance of Attorney General Opinion 90-43, the first sentence of section 365.171(15), Florida Statutes, was amended to extend confidentiality to certain personal, identifying information. The legislative history for enactment of Chapter 90-305, Laws of Florida, amending the statute, reveals that this change in subsection (15) was intended to "[p]rovide for confidentiality of '911' recordings or portions of such recordings when processing information requests (under the provisions of section 119.07(1), Florida Statutes . . .) for personal information or information which might identify a person requesting or reporting emergency service by use of the '911' number."[5]

This office subsequently concluded that a tape recording of a "911" call is a public record subject to disclosure and copying when in the custody of an emergency services department, but that portion of a "911" call containing the name, address, telephone number, and personal information or information which might identify a person requesting emergency service or reporting an emergency must be redacted by the records custodian prior to disclosure.[6]

The general purpose of Chapter 119, Florida Statutes, "is to open public records to allow Florida's citizens to discover the actions of their government."[7] The Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.[8] Any doubt as to the applicability of a Public Records exemption should be resolved in favor of disclosure rather than secrecy.[9]

It is reasonable to conclude that the sound of a person’s voice "may" identify the individual requesting emergency services or reporting an emergency to someone who is acquainted with or related to the caller.[10] The Legislature, however, has not chosen to specify that the recording of an oral communication in an E911 call is protected from disclosure. Rather, it appears that the issue was considered during the 2010 Legislative Session. Legislation was

introduced in response to a situation in which the family of an overdose victim had to endure repeated playbacks of the 911 call reporting their son's death.[11] Proposed Committee Bill 10-03a by the House Governmental Affairs Policy Committee would have made confidential any recording of a request for emergency services or report of an emergency using the E911 system, allowing the release of a transcript of the recording 60 days after the date of the call or by court order upon a showing of good cause. The bill, however, died in committee. The following year, Senate Bill 1310 sought to amend section 365.171, Florida Statutes, to provide that if an oral recording of a 911 emergency transmission is requested, the recording must be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.[12] The bill was temporarily postponed while in committee and was not addressed further.[13]

Thus, while it could be asserted that the sound of a person's voice may identify an individual, the Legislature has considered legislation requiring the distortion of a person's voice requesting services or reporting an emergency in a 911 recording and chose to not do so. This office recognizes, however, that advancements in technology to identify a person by his or her voice may have created a need for the Legislature to revisit the matter and would suggest that you seek legislative clarification in how best to protect the identity of an E911 caller.

Absent a clear provision for the confidentiality or exemption of a voice recording of the person making an E911 call, I cannot conclude that section 365.171(12), Florida makes the sound of a person's voice "information" which would identify the caller for purposes of redacting confidential information from the call.

Sincerely,

Pam Bondi
Attorney General

PB/tals

---

[1] Article I, s. 24, Fla. Const., also recognizes a right of access to public records of virtually all state and local governmental entities, including the legislative, executive, and judicial branches.

[2] *See* s. 24, Art. I, Fla. Const., recognizing an exception from public disclosure for records exempted pursuant to the section or made confidential by the Florida Constitution. Subsection (c) states: "The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law."

[3] *See* s. 119.011(12), Fla. Stat., defining "public records" to include:

"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."

See also Ops. Att'y Gen. Fla. 93-60 (1993) and 90-43 (1990).

[4] *See* Ops. Att'y Gen. Fla. 95-48 (1995), 93-60 (1993), and 90-43 (1990) (while the portion of a voice recording revealing the name, address, and telephone number of a person reporting an emergency or requesting assistance using a "911" number is exempt from disclosure, the public agency is required to release the remainder of the voice recording once the exempt material has been deleted).

[5] *See* Final Staff Analysis & Economic Impact Statement of CS/HB 1437, House of Representatives Committee on Community Affairs, dated June 28, 1990.

[6] Op. Att'y Gen. Fla. 93-60 (1993).

[7] *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997).

[8] *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987).

[9] *Tribune Company v. Public Records, id*.

[10] *Compare* s. 817.568(1)(f)2., Fla. Stat., defining "[p]ersonal identification information" for purposes of the statute to include "[u]nique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation[.]" (e.s.)

[11] *See* http://www.palmbeachpost.com/news/news/state-regional/house-leader-pushes-bill-to-keep-911-calls-private/nL5LM/.

[12] *See* Bill Analysis and Fiscal Impact Statement, Florida Senate, SB 1310, dated April 3, 2011.

[13] Governmental Oversight & Accountability Committee, Florida Senate, April 5, 2011. *See* SB 1310 History at: http://www.flsenate.gov/Session/Bill/2011/1310#1310/?Tab=BillHistory&_suid=14099334391570076424488
.