Drug Testing -- Public Records -- Municipalities

Number: AGO 2013-19

Date: September 12, 2013

Subject:
Drug Testing -- Public Records -- Municipalities

Mr. Thomas A. Cloud
Attorney for the City of Fort Meade
Gray Robinson
Post Office Box 3068
Orlando, Florida 32802

RE: DRUG TESTING – WORKERS' COMPENSATION – MUNICIPALITIES – PUBLIC RECORDS – confidentiality of drug-test results from program established under Ch. 440, Fla. Stat. ss. 440.101 – 440.102 and 119.07, Fla. Stat.

Dear Mr. Cloud:

On behalf of the City of Fort Meade, you ask substantially the following question:

Are drug test results obtained under a drug-free workplace program implemented pursuant to Chapter 440, Florida Statutes, subject to disclosure under the Public Records Law?

In sum:

Drug test results obtained pursuant to a drug-testing program implemented pursuant to Chapter 440, Florida Statutes, are confidential and exempt from section 119.07(1) and section 24(a), Article I of the Florida Constitution.

You state that a public records request has been made for drug test results for city employees. The materials you have provided indicate that the city has implemented a drug-free workplace program pursuant to Chapter 440, Florida Statutes.[1]

The Legislature has expressed its intent to promote drug-free workplaces in this state.[2] This office has determined that municipalities may use sections 440.101 – 440.102, Florida Statutes, to establish a drug-free workplace program.[3] Section 440.102(8), Florida Statutes, provides for the confidentiality of drug test results or other information received as a result of a drug-testing program.[4] With specific enumerated exceptions[5] not applicable here, the statute precludes the disclosure of any information concerning drug test results obtained pursuant to Chapter 440, Florida Statutes, without a written consent form signed voluntarily by the person tested.[6]

Thus, the provisions in sections 440.101 – 440.102, Florida Statutes, clearly make any information received as a result of a drug-testing program implemented pursuant to Chapter 440, Florida Statutes, confidential and exempt from section 119.07(1), Florida Statutes, and section

24(a), Article I of the State Florida.[7]

Accordingly, it is my opinion that drug test results obtained by a municipality pursuant to a drug-testing program implemented under Chapter 440, Florida Statutes, are not subject to inspection or copying pursuant to a request under Chapter 119, Florida Statutes, Florida's Public Records Law.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] Attached to your request is copy of the city's application for the workers compensation credit program for fiscal year 2013-14 indicating that the city implemented its drug-free program in 1995; a certificate designating the City of Fort Meade as a Drug-Free Workplace, issued by Public Risk Management of Florida; and a letter from The Department of Financial Services, dated July 25, 2013, acknowledging the city's entitlement to a premium credit for assessments due the Workers' Compensation Administration Trust Fund and Special Disability Trust Fund.

[2] Section 440.101(1), Fla. Stat.

[3] *See* Op. Att'y Gen. Fla. 98-38 (1998).

[4] *Cf.* Op. Att'y Gen. Fla. 94-51 (1994) (city may not remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, Fla. Stat.); and Inf. Op. to McCormack, dated May 13, 1997 (s. 440.102[8], Fla. Stat., applies to public employees and not to drug test results of public assistance applicants).

[5] Section 440.102(8)(b), Fla. Stat., acknowledges the release of drug-test result "compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction pursuant to an appeal taken under this section" or when "deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding."

[6] Section 440.102(8)(b), Fla. Stat., states that the consent form must contain, at a minimum:

"1. The name of the person who is authorized to obtain the information.
2. The purpose of the disclosure.
3. The precise information to be disclosed.
4. The duration of the consent.
5. The signature of the person authorizing release of the information."

[7] Section 119.07(1), Fla. Stat., generally requires every person who has custody of a public record to permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records. Section 24(a), Art. I, Fla. Const., recognizes a right of access to all public records.