Records, access to agency database

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Subject:
Records, access to agency database

Ms. Eve Boutsis
Attorney for the Village of Palmetto Bay
18001 Old Cutler Road, Suite 533
Miami, Florida 33157-6416

RE: PUBLIC RECORDS – MUNICIPALITIES – TRADE SECRETS – ELECTRONIC RECORDS – access to agency database through external hard drive. s. 119.07, Fla. Stat.

Dear Ms. Boutsis:

On behalf of the Village of Palmetto Bay, you ask substantially the following question:

Must the Village of Palmetto Bay allow access to its copyrighted and licensed database which includes bank account information and social security numbers for copying directly to a hard drive provided by an individual requesting public records?

In sum:

The village is not required to allow direct access to its electronic records through a hard drive provided by a requestor, but must allow inspection and copying of the requested records in a manner that protects exempt and confidential information from disclosure.

You state that an individual has brought his own hard drive onto which he wishes to download all financial information data maintained by the village. You indicate that licensed and copyrighted software is used by the village to input data, which includes exempt and confidential materials, and that the data is not extractable without revealing the copyrighted licensed programs.

Chapter 119, Florida Statutes, Florida's Public Records Law, provides a right of access to the records of the state and local governments. In the absence of a statutory exemption, the right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate, or formalize knowledge.[1] Section 119.01(2)(f), Florida Statutes, requires:

"Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records

request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4)."

The statute clearly provides that if an agency maintains a record in a particular medium and that medium is requested for the copy, the agency "must provide a copy of the record in the medium requested if it is maintained in that medium[.]"[2] The statute also provides that "the agency may charge a fee in accordance with this chapter." The courts of this state have determined that data stored in a computer is a public record subject to inspection and copying.[3]

Data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret under section 812.081, Florida Statutes, is exempt from disclosure under Florida's Public Records Law, Chapter 119, Florida Statutes.[4] You also indicate that data stored in the village's computer database contains exempt and confidential information. As you have represented, the village is unaware of a means to allow an individual to have direct access to its electronic database through the individual's hard drive without compromising licensing agreements by divulging trade secrets and revealing exempt and confidential information.

While public agencies are required to provide reasonable access to records electronically maintained, such agencies must ensure that such records which are exempt or confidential are not disclosed, except as otherwise allowed by law.[5] As the court in *Rea v. Sansbury*[6] concluded, the authority of a public agency to facilitate the inspection and copying of public records by electronic means, "does not mean that every means adopted by the [agency] to facilitate the work of [agency] employees ipso facto requires that the public be allowed to participate therein."[7] Thus, while the village is obliged to provide the requested financial records in an electronic format with confidential and exempt information redacted, there is nothing in the Public Records Law requiring that the individual requesting the public records may dictate the manner in which the records are accessed or copied, such that the confidentiality and protection of licensed and protected material is compromised. As noted above, the custodian's duty to allow inspection or copying of public records must be in a manner that will accommodate the requestor, but at the same time safeguard the records.[8]

Accordingly, it is my opinion that the Village of Palmetto Bay is not required to allow the requestor of public records to directly access the village's computer records through a hard drive provided by the requestor, but must otherwise allow inspection and copying of such records in a manner which will accommodate the request, but protect from disclosure exempt or confidential materials.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* ss. 119.011(12), Fla. Stat., defining "public records" and 119.07, Fla. Stat., requiring every custodian 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. *See also 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).

[2] *And see* Op. Att'y Gen. Fla. 91-61 (1991) (custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript of the disk would not satisfy the requirements of the Public Records Law).

[3] *See Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983) ("There can be no doubt that information stored on a computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet").

[4] Section 119.071(1)(f), Fla. Stat. *And see* Ops. Att'y Gen. Fla. 90-104 (1990) and 90-102 (1990).

[5] Section 119.01(2)(a), Fla. Stat., stating that agencies "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." *And see* Rule 1B-26.003(6)(g)3., F.A.C., adopted by the Division of Library and Information Services of the Department of State.

[6] 504 So. 2d 1315 (Fla. 4th DCA 1987).

[7] *Id.* at 1318.

[8] *Cf.* s. 119.01(2)(a), Fla. Stat., in part, expressing the policy of the state:

"Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law."