Records, manner of providing records

Number: INFORMAL

Date: May 27, 2011

Subject:
Records, manner of providing records

Dr. Sandra M. Cook
Superintendent of Schools
Washington County School District
652 Third Street
Chipley, Florida 32428

Dear Dr. Cook:

As Superintendent of Schools and on behalf of the Washington County School Board, you ask whether an individual requesting that public records be provided by email may be required by the school district to provide a physical address for mailing copies of the requested public records or to be physically present at the district office to inspect the records. You also ask whether the Public Records Act permits the school district to impose conditions or otherwise limit access to the public records of its employees if the district is concerned that the request is made for an improper purpose. Attorney General Bondi has asked me to respond to your letter.

Chapter 119, Florida Statutes, the Public Records Act, provides for public access to government documents.[1] Section 119.07(1)(a), Florida Statutes, makes the right of access to public records clear:

"Every person who has custody of a public record shall 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." (e.s.)

Florida courts have stated that a public records custodian may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access.[2] Rather, the courts have held that the "reasonable conditions" referenced in section 119.07(1), Florida Statutes, do not include anything that would hamper or frustrate a person's right of inspection or copying either directly or indirectly. As the Florida Supreme Court stated in *Wait v. Florida Power & Light Company*:[3]

"It is clear to us that this statutory phrase refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of the records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review."

The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records under Chapter 119, Florida Statutes.

For example, in *Dade Aviation Consultants v. Knight Ridder, Inc.*,[4] the court held that an agency was not authorized to require that a request for records be made in writing. Similarly, in Attorney General Opinion 80-67, this office stated that "a request for copies of records which is sufficient to identify the records desired must be honored by the custodian, whether the request is in writing, over the telephone, or made in person, so long as the required fees are paid." In addition, section 119.01(2)(f), Florida Statutes, requires an agency to provide a copy of the record in the medium requested if the agency maintains the record in that medium.[5] Thus, if the requested record exists in an electronic format, they must be provided in that format if requested.

With regard to those individuals who are authorized to inspect and receive copies of public records, the Public Records Act provides that "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*."[6] (e.s.) Florida courts have held that "the law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal."[7] As stated by one court,

"as long as the citizens of this state desire and insist upon 'open government' and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws."[8]

Further, the Public Records law contains no requirement that a requestor reveal his purpose for requesting records or show a "special interest" as a condition of receiving access to the public records. Florida courts have recognized the legislative objective underlying the creation of Chapter 119, Florida Statutes, was to insure to the people of Florida the right freely to gain access to governmental records without regard to the purpose of such inquiry.[9] Thus, "[t]he motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act."[10]

A policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian's duty to protect public records from alteration or destruction, but to impose additional constraints on the requestor. The district, therefore, may not respond to the records request by insisting that the records be provided in hard copy in an effort to determine the identity of the requestor. Nor may the district require the requestor to be physically present at the district office to inspect electronically maintained public records for the same purpose or otherwise require an anonymous requestor to disclose his or her name, address, telephone number, or similar identifying information to the custodian prior to inspecting or receiving copies of public records.[11]

While this office understands your concern for the safety and security of school system employees and their personal information, a school district is not authorized to impose conditions or otherwise limit access to public records based on a suspicion that the request may be for an improper purpose. I would note that the Florida Statutes impose criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes and for the criminal use of a public record or public records information.[12]

I trust that the above informal advisory comments may be of assistance to the school district.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/GH/tsh

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[1] Sections 119.01 and 119.07, Fla. Stat.

[2] *Davis v. Sarasota County Public Hospital Board*, 480 So. 2d 203 (Fla. 2d DCA 1985), *review denied*, 488 So. 2d 829 (Fla. 1986) (person making a public records request under s. 119.07(1), Fla. Stat., entitled to see actual nonexempt records of legal fees paid by hospital board not merely extracts from such records); Op. Att'y Gen. Fla. 75-50 (1975). *And see State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (requirement that persons with custody of public records allow records to be examined "at any reasonable time, under reasonable conditions" is not unconstitutional as applied to public records custodian who was dilatory in responding to public records requests).

[3] 372 So. 2d 420, 425 (Fla. 1979). *And see State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905); and *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

[4] 800 So. 2d 302 (Fla. 3d DCA 2001).

[5] *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). *Cf. Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request).

[6] Section 119.01, Fla. Stat.

[7] *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997).

[8] *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996). *And see Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002) (defendant's conduct in making in excess of 40 public records requests concerning victim constituted a "legitimate purpose," and thus cannot violate the stalking law "because the right to obtain the records is established by statute and acknowledged in the state constitution"); and *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991) ("Even though a public agency may believe that a person or

group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida.").

[9] *See, e.g., Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985) (legislative objective underlying the creation of Ch. 119 was to insure to the people of Florida the right freely to gain access to governmental records; the purpose of such inquiry is immaterial); *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) ("the newspaper's motives [for seeking the documents], as well as the hospital's financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act"). *And see Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005) ("the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida's public records law").

[10] *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). *See also Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991) ("Even though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida.").

[11] *And see Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself). A custodian, however, may request information which will facilitate the receipt or delivery of copies of public records if such information has not been provided. For example, if hard copies of documents are requested, the custodian may inquire how such copies should be provided or if a deposit is required for the production and copying of public records, the custodian may inquire how such information may be communicated to the requestor.

[12] *See* ss. 817.568 and 817.569, Fla. Stat.