Records, working papers of CPAs not provided to agency

Number: INFORMAL

Date: October 09, 2009

Subject:
Records, working papers of CPAs not provided to agency

Mr. Samuel C. Hoffman, Chairman
Fraternal Order of Police Labor
Committee, Lodge #25
214 East Lucerne Circle, Suite B
Orlando, Florida 32801

Dear Mr. Hoffman:

This office is in receipt of your letter of June 18, 2009, requesting our assistance in accessing the auditor's work papers produced by the accounting firm of Ernst & Young concerning the 2007 - 2008 Comprehensive Annual Financial Report of the City of Orlando. Attorney General McCollum has asked me to respond to your letter.

Chapter 473, Florida Statutes, regulates the practice of public accountancy in the state. This chapter creates the Board of Accountancy and provides for the licensure of Florida certified public accountants. *See* ss. 473.303 and 473.308, Florida Statutes. With regard to the ownership of working papers produced by an accountant in the course of providing professional services, section 473.318, Florida Statutes, states that:

"All statements, records, schedules, working papers, and memoranda made by a licensee or her or his employee incident to, or in the course of, professional services to a client, except the reports submitted by the licensee to the client and except for records which are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary."

Thus, the Legislature has determined that working papers of Florida certified public accountants are private property except for those reports provided to a client or those records that are a part of the client's own records.

The City of Orlando, the client in this instance, has stated that "Ernst & Young provided us only with the completed management letter" and it is my understanding that you have received a copy of this letter. The working papers produced by Ernst & Young concerning the 2007 - 2008 Comprehensive Annual Financial Report of the City of Orlando appear to be the private property of the accounting firm and would not be subject to inspection and copying under Florida's Public Records Law. Likewise, these records would not be subject to the requirement in section 119.07(1)(e), Florida Statutes, that:

"If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute."

Because these records are not public records and are not in the custody of the city, the records custodian for the city is under no statutory obligation to provide citations to exemptions from inspection and copying for public records.

I trust that these informal comments will be helpful to you in advising your client. Thank you for providing us with this opportunity to work with you on resolving your questions.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh