Records, school employee deduction records, delay

Number: INFORMAL

Date: August 25, 2009

Subject:
Records, school employee deduction records, delay

Mr. Tim Wilder
Superintendent, Gulf
County School District
150 Middle School Road
Port St. Joe, Florida 32456

Dear Mr. Wilder:

On behalf of yourself and the Gulf County School Board, you have asked this office for assistance in determining the scope of the exemption for payroll deduction records contained in section 1012.31(3)(a)4., Florida Statutes. This provision states that "[t]he payroll deduction records of an employee shall be confidential and exempt from the provisions of s. 119.07(1)." Thus, pursuant to the statute, payroll deduction records are confidential and exempt from the production and copying mandate of Florida's Public Records Law.

Section 1012.31(3)(a), Florida Statutes, provides that public school system employee personnel files are subject to the Public Records Law and provides a number of specific exemptions for particular information that may be contained in a personnel file. The phrase "personnel file" is defined for purposes of the statute as:

"all records, information, data, or materials maintained by a public school system, in any form or retrieval system whatsoever, with respect to any of its employees, which is uniquely applicable to that employee whether maintained in one or more locations."[1]

I am enclosing a copy of Attorney General Opinion 2009-11 which was recently issued by this office and discusses the exemption from the Public Records Law for payroll deduction records set forth in section 1012.31(3)(a)4., Florida Statutes.

With regard to your question relating to the authority of the Gulf County School District to provide employees with a reasonable opportunity to assert exemptions prior to releasing these records for inspection and copying, the Public Records Law requires that the custodian of public records acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. The Public Records Act, does not contain a specific time limit for compliance with public records requests. However, the Florida Supreme Court has stated that the only delay in producing records permitted under Chapter 119, Florida Statutes, "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."[2]

Likewise, section 1012.31, Florida Statutes, contains no general provision authorizing a delay in the production of personnel files and the contents thereof. However, section 1012.31(3)(a)3., states that "[n]o material derogatory to an employee shall be open to inspection until 10 days after the employee has been notified pursuant to paragraph (2)(c)."

I trust that these informal comments and the copies I am enclosing will be helpful to you and the attorney for the school board in responding to this Public Records Request.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure: AGO 2009-11

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[1] Section. 1012.31(4), Fla. Stat.

[2] *See Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985).