

Records, personnel files

Number: INFORMAL

Date: August 27, 1998

Subject:
Records, personnel files

Mr. Thomas F. Barry, Jr.
Secretary
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

Dear Secretary Barry:

Thank you for contacting this office regarding whether the documents in a state employee personnel file which relate to a disciplinary proceeding or other adverse employment decision may be segregated from other documents in a personnel file. It appears that these records are the subject of a settlement agreement resolving a civil rights lawsuit. None of the particulars of this matter have been provided to this office.

While it is the policy of this office to refrain from commenting on matters under litigation, I would note that section 69.081(8)(a), Florida Statutes, commonly referred to as the "Sunshine in Litigation Act," provides in part:

"Any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against the state, its agencies, or subdivisions or against any municipality or constitutionally created body or commission is void, contrary to public policy, and may not be enforced."

Thus, a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file. Any such provision in a settlement agreement would be void and unenforceable as contrary to public policy.

Any questions which remain unresolved in this civil rights lawsuit may be more appropriately presented to the judge in the case for resolution in conformance with his or her order. However, in an effort to provide some direction to you in resolving this matter, I am enclosing copies of several previously issued Attorney General Opinion's which deal with the interaction of the public Records Law and personnel records.

I trust that these informal comments will be helpful.

Sincerely,

Joslyn Wilson
Assistant Attorney General
Director, Opinions Division

JW/tgk

Enclosures: Attorney General Opinion's 94-51, 94-54, and 94-75