Public Records, grand jury

Number: AGO 73-177

Date: September 29, 2011

Subject:
Public Records, grand jury

RE: PUBLIC RECORDS LAW—LETTER TO GRAND JURY BY CITY ATTORNEY—EXEMPT FROM DISCLOSURE

To: Joseph H. Weil, North Bay Village City Attorney, Miami

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Is a city attorney required under the Sunshine Law or Public Records Law to release to the city council the contents of a letter sent to the grand jury at the request of a member of the council?

SUMMARY:

Communications addressed to the grand jury are confidential under s. 905.24, F. S., and are thus not open to public inspection under the exception to the Public Records Law, s. 119.07(2)(a), F. S.

The Sunshine Law, s. 286.011, F. S., applies only to the meetings of a public body and is not applicable under these circumstances.

The Public Records Law, s. 119.01, F. S., provides that all state, county, and municipal records shall be open to inspection by citizens of Florida. This does not, however, apply to records which "presently are deemed by law to be confidential or which are prohibited from being inspected by the public . . . .: Section 119.07(2), F. S.

Section 905.24, F. S., reads in part as follows: "Grand jury proceedings are secret . . . ." It is the public policy of the State of Florida to keep secret the proceedings of the grand jury. Clein v. State, 52 So.2d 117 (Fla. 1950). What must therefore be determined is whether the letter written by you to the foreman of the grand jury on behalf of the vice mayor can be considered part of the grand jury proceedings.

The case of State v. Tillett, 111 So.2d 716 (2 D.C.A. Fla., 1959), speaks indirectly to this point when it cites with approval the Texas case of Hott v. Yarborough, 245 S.W. 676 (Tex. 1922). In *Hott*, a letter had been written to the foreman of the grand jury asking for an investigation into an alleged violation of the criminal law. The court refused to allow this letter into evidence in a subsequent libel and slander case. The Florida court noted that the reason for this holding was that the letter, "as a communication made to the grand jury in the regular performance of its

duties" was "absolutely privileged."

Hott, supra, itself rests partially on the following philosophy:

"It is unquestionably the right, if not, in fact, the duty, of every one [sic] who has knowledge of the commission of a criminal offense, punishment to the party guilty whereof is a matter of general public interest, to call to the attention of the grand jury the facts within his knowledge, to the end that they may have proper investigation, and such actions as the grand jury may deem advisable. Equally clear is the right of any one [sic] who may consider himself aggrieved by the actual or supposed commission of a crime to call the matter to the attention of the grand jury for investigation and action. The law does not restrict the method by which this may be done. But whenever it is done, by whatever method, so long as it is confined to a communication directly to the grand jury itself or to one of its members acting in his official capacity, it is clearly a part of a judicial proceeding, pertains to the property administration of criminal justice, is absolutely privileged and cannot be the basis of a civil action for damages." [*Hott* at 678-679.].

The above language was cited in Buchanan v. Miami Herald Publishing Company, 206 So.2d 465 (3 D.C.A. Fla., 1968). The district court recognized and approved of the trial court's extending of the absolute privilege not only to witnesses, but also to the persons who had presented the information to the grand jury. Buchanan, *supra*, was affirmed by the Florida Supreme Court, 230 So.2d 9 (Fla. 1969).

There are exceptions to the grand jury secrecy rule. *See* s. 905.27, F. S. The situation you mention does not, however, come under any of them.

Your letter to the grand jury is therefore privileged under s. 905.24, F. S. Accordingly, your question is answered in the negative.