Dept. of Management Services, retirees names/addresses

Number: INFORMAL

Date: May 11, 2009

Ms. Linda South, Secretary
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

Dear Ms. South:

Thank you for contacting the Florida Attorney General's Office regarding the provisions of section 121.031, Florida Statutes. You have asked several questions relating to the duties of the Department of Management Services, Division of Retirement, in light of the language of this statute.

Pursuant to section 121.031, Florida Statutes, the Department of Management Services is authorized to adopt rules for the administration of the Florida Retirement System and to implement the provisions of law conferring duties upon the department under Chapter 121, Florida Statutes.[1]

Section 121.031(5), Florida Statutes, relating to public records, provides:

"The names and addresses of retirees are confidential and exempt from the provisions of s. 119.07(1) to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except to a public agency engaged in official business. However, a state or local government agency may provide the names and addresses of retirees from that agency to a bargaining agent as defined in s. 447.203(12) or to a retiree organization for official business use. Lists of names or addresses of retirees may be exchanged by public agencies, but such lists shall not be provided to, or open for inspection by, the public. Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired."

The Department of Management Services has received a request from the American Federation of State, County, and Municipal Employees (AFSCME) for a list of "all retired Career Service employees." AFSCME has advised you that it is a bargaining agent within the meaning of section 447.203, Florida Statutes, and that it is a retiree organization and would come within the scope of section 121.031(5), Florida Statutes. You have several questions relating to the department's obligations under the Public Records Law in fulfilling this request.

After reviewing the information you have submitted and the statutory authority of the department in this regard, it is our suggestion that the department engage in administrative rule making to delineate the scope of the statutory requirement to release the names and addresses of retirees to a bargaining agent or to a retiree organization pursuant to section 121.031(5), Florida

Statutes. Several questions seem to require a resolution of mixed questions of law and fact and these are beyond the scope of this office's authority to address in an Attorney General's Opinion.[2]

In addition and in an effort to be of some assistance to you in this matter, I would note that your final question relates to those records which the agency is required to produce pursuant to section 121.031(5), Florida Statutes. While this issue may most appropriately be addressed in an administrative rule, section 121.031(5), Florida Statutes, specifically provides that a state agency may provide the names and addresses of retirees "from that agency." You have asked whether this means that the Department of Management Services may only produce the names and addresses of its own employees.

As you have advised this office, the Division of Retirement, located within the Department of Management Services, maintains the names and addresses of all members in the Florida Retirement System. Florida Retirement System members include retirees of all state agencies, the judicial and legislative branches, and local governments.[3]

While the language of section 121.031(5), Florida Statutes, would appear to authorize a retiree organization to request retiree records from specific state or local governmental agencies, the fact that the Division of Retirement maintains all records of the Florida Retirement System suggests that, unless the requestor has limited his or her request, the records "from that agency" when directed to the division would include all records for retirees from the Florida Retirement System. It is my understanding, for example, that the Office of the Attorney General does not maintain retiree information, but refers requests for these records to the Division of Retirement.

I trust that these informal comments will be helpful to you and that the department will feel free to contact us for any assistance we can provide relating to the terms of any rule proposed to effectuate section 121.031(5), Florida Statutes.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 121.031(1), Fla. Stat.

[2] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions.

[3] *See, e.g.*, ss. 121.031, 121.0312, 121.045, 121.046, 121.047, Fla. Stat., providing for the administration of the Florida Retirement System and consolidating and merging other retirement systems into the Florida Retirement System.