Public Records -- School District Employees

Number: INFORMAL

Date: December 22, 2008

Dr. Sandra Cook
Superintendent
Washington County Schools
652 Third Street
Chipley, Florida 32428

Dear Dr. Cook:

You have asked whether the school district must release information identifying employees and dependents of same who participate in the school district's health plan. You cite to the recent Polk County circuit court case, Chandler v. School Board of Polk County,[1] and its conclusion that the school board was not a covered entity under the Health Insurance Portability and Accountability Act (HIPPA), stating that Washington County is self-insured and, therefore, would be a covered entity. If so, you question whether HIPPA would preempt the provisions of Florida's Public Records Law precluding the release of information on those enrolled in the district's self-insurance plan. You also ask whether the district may provide employees reasonable opportunity to assert the exemption in section 119.071(4), Florida Statutes, prior to responding to a public records request.

This office recently commented upon a similar situation posed by Senator Paula Dockery. The informal opinion noted the confidentiality of medical information, but concluded that identifying information regarding participants in a school district's health insurance plan did not clearly constitute protected medical information. A copy of the informal opinion to Senator Dockery is enclosed for your review.

As stated in the informal opinion to Senator Dockery, this office does not generally comment upon Federal law and a response to your first question would necessarily involve interpretation of HIPPA. In regard to your second question, this office has consistently stated that no automatic delay is permissible. The Florida Supreme Court has stated that the only delay in producing records allowed 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] Thus, this office would advise that the Public Records Law does not allow a delay in the production of public records in order for the school district to notify employees who may be able to assert the exemption in section 119.071(4), Florida Statutes.

I would note that section 119.071(4), Florida Statutes, states that an agency that is the custodian of personal information, but is not the employing agency of the individual may maintain the exempt status of the information only if the individual or his or her employing agency makes a written request that the exemption be maintained. There is nothing to indicate that such a written request for maintenance of the exemption may be made after a request for the public record has been made. Generally, the date in determining whether a document is subject to disclosure is

the date the public records request is made, making the law in effect on that date applicable.[3]

I trust these comments and the enclosed informal opinion will be of assistance to you in addressing this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

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Enclosure

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[1] Case No. 2008CA-004389, Tenth Judicial Circuit in and for Polk County, Order Granting Plaintiff's Motion for Summary Judgment, The Honorable Roger A. Alcott, Circuit Judge, October 9, 2008.

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

[3] *See Baker County Press, Inc. v. Baker County Medical Services*, 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004).