

Release of utility customers' names and addresses

Number: INFORMAL

Date: April 06, 2000

Ms. Pamela K. Akin
Clearwater City Attorney
Post Office Box 4748
Clearwater, Florida 33758-4748

RE: PUBLIC RECORDS--MUNICIPALITIES--LAW ENFORCEMENT OFFICERS--
FIREFIGHTERS--JUDGES--release of names and home addresses of judges, law enforcement officers, and firefighters contained in city utility records. s. 119.07(3)(i), Fla. Stat.

Dear Ms. Akin:

You ask whether Florida's Public Records Law requires the City of Clearwater to release utility customer lists that contain the names and home addresses of city utility customers including judges, law enforcement officers and firefighters. You also ask whether the city may delay the release of the list in order to evaluate the purpose of the requesting party. Attorney General Butterworth has asked me to respond to your letter.

According to your letter, the City of Clearwater Utility Customer Support Division is responsible for billing customers for utility services provided by the city and for maintaining customer lists which contain the names and home addresses of utility customers. The city has received a request for copies of these lists from the Clearwater Homeless Intervention Project, which intends to use the information contained in the lists to distribute a newsletter to city residents.

Chapter 119, Florida Statutes, Florida's Public Records Law, establishes a statutory right of access to records of agencies made or received pursuant to law or ordinance or in connection with the transaction of official business.[1] Thus, the records created by the city in providing utility services are subject to the provisions of Chapter 119, Florida Statutes, and, in the absence of a statute exempting such information, subject to disclosure.[2]

You have not referred to any statute generally exempting or making confidential the records of city utilities services, including customer lists, from public disclosure.[3] You have, however, expressed your concern that some city utility customers are law enforcement officers, firefighters, and judges and the customer lists contain the names and home addresses of these individuals. The provisions of section 119.07(3)(i), Florida Statutes, address such concerns by providing an exemption for certain personal information relating to these individuals. Section 119.07(3)(i)1., Florida Statutes, provides in pertinent part:

"The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel . . . ; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the

children of such personnel are exempt from the provisions of subsection (1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1)."

Recognizing the difficulty an agency might encounter in identifying these individuals who are not agency employees, the Legislature amended the statute in 1993[4] to provide in section 119.07(3)(i)2., Florida Statutes:

"An agency that is the custodian of the personal information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency."

Thus, the provisions of section 119.07(3)(i), Florida Statutes, appear to govern resolution of your first inquiry.

You also ask whether the city may delay the release of records in order to evaluate the purpose of the requesting party. You have not advised this office, however, of any particular concern regarding the release of such information. Accordingly, any comments expressed herein must be general in nature.

Chapter 119, Florida Statutes, requires no showing of purpose or "special interest" as a condition of access to public records.[5] As the Second District Court of Appeal stated in *Lorei v. Smith*,[6]

"The legislative objective underlying the creation of chapter 119 was to ensure to the people of Florida the right freely to gain access to governmental records. The purpose for such inquiry is immaterial."

The courts and this office have therefore concluded that, in the absence of statutory authorization, an agency may not condition the production of public records upon a requirement that the person seeking inspection disclose background information about himself.[7] The courts have also rejected automatic or unreasonable delays in the production of public records.[8] There is nothing, however, to prevent the city utility department from advising a customer that copies of his or her utility records have been requested.[9]

I trust that the above informal advisory comments may be of assistance.

Sincerely,

JW/tgk

[1] See s. 119.07(1)(a), Fla. Stat., requiring custodians of public records to permit the inspection or copying of such records at reasonable times and under reasonable conditions. *And* see s. 119.011(1), Fla. Stat., defining "[p]ublic records"; and s. 119.011(2), Fla. Stat., defining "[a]gency" to include, among others,

"any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

Cf. Art. I, s. 24(a), Fla. Const., establishing a constitutional right of access to records of public agencies.

[2] See *generally* Op. Att'y Gen. Fla. 85-03 (1985), stating that the mailing list of subscribers to the Game and Fresh Water Commission's newsletter is a public record; and *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985), rejecting constitutional privacy concerns as operating to shield agency records on its employees and officers. *Cf.* Op. Att'y Gen. Fla. 96-88 (1996).

[3] *But* see s. 119.07(3)(r), Fla. Stat., providing that all records supplied by a telecommunications company, as defined by s. 364.02, Fla. Stat., to a state or local governmental agency which contain the name, address, and telephone number of subscribers are confidential and exempt. This office concluded in Attorney General Opinion 97-05 (1997) that s. 119.07(3)(r), Fla. Stat., applies to the city's telecommunications records of its telephone subscribers when the city acts in its capacity as a telecommunications company.

[4] See s. 1, Ch. 93-87, Laws of Florida, which in subsection (3)(k) (now [3][i]), designated subparagraph 1. and added subparagraph 2.

[5] See *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 230 n. 2 (Fla. 3d DCA 1998) *review denied*, 729 So. 2d 389 (Fla. 1999) ("Booksmart's reason for wanting to view and copy the documents is irrelevant to the issue of whether the documents are public records"); *News-Press Publishing Co., Inc. v. Gadd*, 388 So. 2d 276 (Fla. 2d DCA 1980).

[6] 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985).

[7] See *Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987); Ops. Att'y Gen. Fla. 92-38 (1992) and 91-76 (1991) (requestor of public records may not be required to disclose name, address, telephone number or the like to the custodian of the public records in the absence of a statute so requiring). *Compare* s. 320.05(2), Fla. Stat., requiring the Department of Highway Safety and Motor Vehicles to record the name and address of any person other than a

representative of a law enforcement agency who requests and receives information from a motor vehicle registration record.

[8] See generally *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985) (county resolution imposing 24-hour waiting period before allowing inspection of county personnel records was no longer permissible); *Town of Manalapan v. Rechler*, 674 So. 2d 789 (Fla. 4th DCA 1996), *review denied*, 684 So. 2d 1353 (Fla. 1996) (agency's unreasonable and excessive delays in producing public records can constitute an unlawful refusal to produce access to public records). And see *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985).

[9] See *Times Publishing Company v. A.J.*, 626 So. 2d 1314, 1316 (Fla. 1993), in which the Supreme Court stated that while the statutes contain no provision absolutely requiring the custodian of a record to notify any third party about the intended release of that record, nothing prohibits notification: "This is a matter the legislature apparently deemed fit to leave to the discretion of the custodian."