

11/25

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

THE CITY OF GAINESVILLE,
a municipal corporation,
Plaintiff,

vs.

CASE NO: 96-3425-CA

GAINESVILLE SUN PUBLISHING
COMPANY, a Florida corporation.
Defendant.

WRIT OF MANDAMUS

THIS CAUSE came before the court upon the Complaint for Declaratory Judgment filed by THE CITY OF GAINESVILLE (City) to clarify its obligation under Chapter 119, Florida Statutes, to disclose or keep confidential the name of an aggravated battery victim contained in a Gainesville Police Department Case Report. The City has refused a request from the GAINESVILLE SUN PUBLISHING COMPANY (Gainesville Sun) for disclosure of the name of the victim. In response to the City's Complaint for Declaratory Judgment, the Gainesville Sun has filed a Petition for Writ of Mandamus to compel the City to provide the name of the victim. The court conducted a hearing and the parties have been given the opportunity to submit memoranda.

Florida has a public policy for "all state, county, and municipal records" to be "open for personal inspection by any person" and it is embodied in the public records act, Chapter 119, Florida Statutes. § 119.01(1), Fla. Stat. (1995); Art. 1, § 24, Fla. Const. The public records act requires every person who has custody of a public record to "permit the record to be inspected or examined by any person desiring to do so." § 119.07(1)(a), Fla.

NATURE SAVER™ FAX MEMO 01616		Date	# of pages ▶
To	Mike Edmonston's office		From
Co./Dept.		Co.	Pat Gleason
Phone #		Phone #	850 488 9853
Fax #	361 355 7274	Fax #	

Stat. (1995). The reason for open public records is to enable the citizens' to evaluate the performance of government officials and agencies, and to avoid the harm caused when government is permitted to operate out of public view. Times Publishing Company v. City of St. Petersburg, 558 So. 2d 487, 492 (Fla. 2d DCA 1990).

Despite the strong public policy in favor of open records, in some situations the public interest is better served by exempting information from disclosure. It is the job of the legislature to analyze the need for such exemptions and enact them into law. Tribune Company v. Public Records, P.C.S.O. # 79-35504 Miller/Jent, 493 So. 2d 480, 484 (Fla. 2d DCA 1986). Therefore, in the absence of a specific, legislatively established exemption, public records must remain open. Id. The court cannot take over the legislature's role and create exemptions by judicial decree. Id. Moreover, in doubtful situations, the court should find in favor of open records. Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d 775, 780 at footnote 1 (Fla. 4th DCA 1985).

The legislature has expressly provided for police reports to be subject to the open records requirements, § 119.105, Fla. Stat. (1995), but has established some exemptions. The exemption at issue in this case, was created by a 1995 amendment to § 119.07(3)(y), now § 119.07(3)(s), Fla. Stat. (1995). The substantive amendment is contained in Chapter 95-320, Laws of Florida, and it provides in relevant part:

(y) Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as a victim of a crime, which document is received by an agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1). Any information not otherwise held confidential or exempt from the provisions of § 119.07(1) which reveals the home or employment

telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred.

Section 2. The Legislature finds that it is a public necessity that not only agencies that regularly receive victim information, as described in s. 119.07(3)(y), Florida Statutes, keep that information exempt from public disclosure, but that all agencies receiving certain identifying information that relates to the victim of certain crimes keep it exempt, provided the victim makes a written request that such information not be released. The point of the exemption is to protect victims from further embarrassment, harassment or injury that can result from making public personal information regarding them. It makes little sense for agencies that regularly receive such information to keep the information exempt, if agencies that do not regularly receive such information can disclose the information to the public. Regardless of the source, such information made public can be damaging to the continued health and safety of the victims.

Prior to the 1995 amendment, only the first sentence of the statute provided an exemption for information relating to victims. That exemption was interpreted in an official opinion of the Attorney General to apply only to information contained in documents, and only to documents that were "received" by an agency as opposed to a documents that were generated by an agency. Op. Att'y Gen. Fla. 90-80 (1990). The Attorney General opinion concluded that a police report was a document generated by an agency and not a document received. Id. Therefore, information about a victim contained in a police report was not considered to be exempt. Id. The parties to the instant case concede that the name of the victim is not exempt under this first provision. Rather, the dispute between the parties concerns whether the name of the victim is exempt under the second provision, which is a new exemption created by the 1995 amendment.

The legislature explained in the findings supporting the 1995 amendment that the previous exemption was not adequate. Although agencies frequently share information other than through documents received on a "regular" basis, such information was not exempt under the old provision. Under the new provision, such information can be exempted upon written request by the victim and verification of victim status. The kind of information exempted under the new provision, however, is narrower in some respects¹ than the exemption under the first provision.

The new provision does not contain an exemption for the "identity" or name of the victim. Although an exemption for "identity" was included in the original draft of the new provision, it is not in the committee version, nor is it in the final version of the exemption. See 1995 Senate Bill 2198, 24-1534A-95. The final version specifically exempts "information . . . which reveals the home or employment telephone number, home or employment address, or personal assets" of a victim. It does not include "identity" and therefore the name of the victim in the instant case does not appear to be covered by the exemption.

Despite the omission of "identity" from the new provision, the City and the State Attorney as intervenor, argue that the name of the victim is exempted from disclosure because the name of the victim is information that can be used to reveal the victim's addresses and telephone numbers. The victim's name in this case, is listed in the Bell

¹In some respects the new exemption is much broader than the first exemption. The information exempted in the new provision does not need to be contained in a document that identifies a person as a victim of crime. It appears to encompass just about any public record which contains an address, phone number or asset information of a person who unfortunately becomes a victim.

South phone book along with his address and phone number. They argue that without exempting the name of the victim, the exemption is virtually useless.

Although the City and the State Attorney make valid arguments, it should be noted that having a listing in the phone book is fairly common, but not all people are listed. Furthermore, under such a broad interpretation of the exemption, the fact that: (1) the victim lives on the 2300 block of SW 20th Avenue; (2) was attacked on March 30, 1996 at 1:30 AM on the 1800 block of NW 3 Place; (3) has three friends living on the 1600 block of NW 3d Place; and (4) suffered fractures to his jaw and right arm, all can be considered information that could reveal the victim's address and telephone number. This information, however, has already been disclosed in a Gainesville Police Department News Release.

A broad interpretation creates too much uncertainty as to what information is exempt and what information is required to be disclosed. If the legislature intends to exempt the name of a victim from disclosure, it must effectuate that intent through a clearly written exemption. The court finds that the current exemptions do not encompass the name of the victim.

In ruling on this case the court does not condone in any way, the mass publication of information about a victim that would put the victim in danger or fear. Access to information is a carefully guarded right. It should be exercised in a responsible manner.

The court having heard that arguments of the parties, having reviewed the meomoranda submitted, and being otherwise fully informed in the premises,

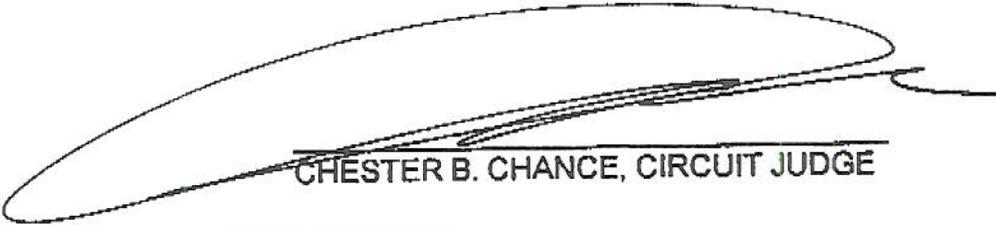
IT IS ADJUDGED as follows:

1. The City shall make available to the Gainesville Sun, the name of the victim

in Gainesville Police Department Case Report #96-6500.

2. The court reserves jurisdiction to award costs and attorneys' fees in favor of the Gainesville Sun, upon proper motion and notice.

DONE AND ORDERED in Chambers at Gainesville, Florida on this 28th day of October, 1996.



CHESTER B. CHANCE, CIRCUIT JUDGE

CERTIFICATE OR SERVICE

I HEREBY CERTIFY that a true and correct copy of this order has been furnished by U.S. mail on this 28 day of October, 1996 to: Elizabeth A. Waratuke, Rod Smith, Adam Liptak, George D. Gabel and Joel B. Toomey.



JOY CUMMINGS, JUDICIAL ASSISTANT