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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL NO. 00-008234CI-19

CITY OF PINELLAS PARK,
FLORIDA, a municipal corporation,
Plaintiff,

vs.

TIMES PUBLISHING COMPANY,
a Florida corporation, d/b/a The
St. Petersburg Times,
Defendant.

ORDER ON TIME'S PUBLIC RECORDS CLAIM AND THE RETURN ON THE
ALTERNATIVE WRIT OF MANDAMUS

THIS CAUSE came on to be heard on the Time's public records claim and return on the Alternative Writ of Mandamus. The Court, having heard testimony and argument and having reviewed memoranda, enters this order based on the following findings and conclusions:

1. MGT is a private consultant hired by the City of Pinellas Park to do an investigation and make a report and recommendations concerning employee morale problems in the Pinellas Park Police Department.

2. MGT prepared a survey and had department employees fill it out. The survey was very detailed and called for responses that many employees were concerned might cause them problems with their employment. Consequently, MGT promised that their identities would not be revealed. Without this promise, little or no useful information would have been secured.

3. A separate sheet of demographic information accompanies many of the surveys. The City and the Intervenor/Union are concerned that this demographic

information might be used to identify the employees and link them to the survey responses. MGT had intended to use the demographic information, but in the end it was not useful for any purpose.

4. The City and the Intervenor is also concerned that some employees' handwriting in the survey might be identifiable.

5. The St. Petersburg Times claims that the surveys and the demographic information constitute public records and must be disclosed pursuant to Chapter 119.

6. The City and the Intervenor maintains that these documents are not public records or that they are not otherwise subject to disclosure. The City's position is based on several arguments.

(a) MGT is a private entity and therefore the surveys are not public records.

The City argues based on the factors set forth in *News and Sun Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992), that the documents are not public records. The Court need not reach that issue because it is clear that MGT turned the documents over to the City. Thus, the City received these documents and they ceased to be subject to any private documents claim. See Art. I, § 24, Fla. Const., § 119.011(2) Fla. Stat. (2000).

(b) Survey responses are like drafts or notes. The City relies on the following language from *Shevin v. Bryon, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). In that case, the Court said:

To give content to the public records law which is consistent with the most common understanding of the term "record," we hold that a public record, for purpose of section 119.011(1), is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type. To be contrasted with "public records" are materials prepared as drafts or notes, which constitute mere precursors of

governmental "records" and are not, in themselves, intended as final evidence of the knowledge to be recorded. Matters which obviously would not be public records are rough drafts, notes to be used in preparing some other documentary material, and tapes or notes taken by a secretary as dictation. Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business.

The City overlooks the fact that the surveys are not notes. More importantly, as to each of the employees, their responses were prepared in connection with their official agency business and they were "intended to perpetuate, communicate, or formalize knowledge" that they had about their department. They are public employees using the surveys as the "final evidence" of their knowledge. In *Bookmart Enterprises v. Barnes & Noble College Bookstores*, 718 So.2d 227 (Fla. 3d DCA 1998), the court found that course book orders from public employees to a private company were public records. The same is true of these surveys and the demographic information from public employees to a private company.

(c) Power of the Court to refuse to order disclosure of documents or to order limited disclosure based upon public policy. There is no doubt that the employees in this case justifiably believed that their identities would not be disclosed. The City's contract with the consultant said that and the instructions for the survey and the consultant's agents promised confidentiality. Frankly, the Court is concerned that such representations were made to these employees without also advising them of the nature of the public records law and that they are, in fact, public employees. Without that promise, it is unlikely that the employees would have filled out the survey. However, there is absolutely no doubt that promises of confidentiality do not empower the Court to

depart from the public records law. *Douglas v. Michael*, 410 So.2d 936, 940 (Fla. 5th DCA 1982); *Mills v. Doyle*, 407 So.2d 348, 350 (Fla. 4th DCA 1981); *United Teachers of Dade v. School Board of Dade County*, 1992 WL 494954, 20 Medial L. Rep. 2258 (Fla. 11th Cir. Dec. 3, 1992). The Court cannot judicially create an exception to the rule of disclosure; that is purely a legislative function. *Doyle*, 410 So.2d at 940. Thus, the promises of confidentiality do not permit the Court to refuse disclosure or to order limited disclosure of the demographic sheet or the survey.

The Court's concern is ameliorated by several factors. First, the real concern of the public employees is having their identity connected with the information, rather than disclosure of the information and for the most part that is unlikely to happen. Second, given the police Sergeant's testimony as to the character of the police chief, this Court is of the view that it is unlikely that the chief would permit any of her officers to be mistreated for providing the information. Third, if any officer were to be penalized for providing the information they would probably have various legal remedies.

(d) **Examination exemption to disclosure.** This Court has great respect and admiration for counsel for the City. He has advocated before this Court on numerous occasions. With this background, the Court respectfully suggests that, while this argument is creative, it is a major stretch. No further comment is necessary.

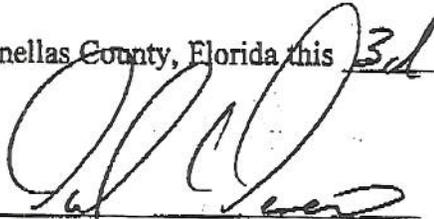
ACCORDINGLY, it is hereby,

ORDERED AND ADJUDGED that;

A. The surveys and demographic information do constitute public records and must be disclosed.

B. The City will retrieve these records from the Court and provide them to counsel for the Times within 5 business days of the date of this order.

DONE AND ORDERED at St. Petersburg, Pinellas County, Florida this 3^d day of January 2001.



DAVID A. DEMERS
Circuit Judge

Copies to: Alison M. Steele, Esquire
Thomas E. Reynolds, Esquire
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