

Public Records – Exemptions and Redactions

Under Florida's public records law, when a public record contains information that is exempt from disclosure, the records custodian must redact the exempt information and disclose the remainder of the public record. The Constitution requires the Legislature to enact exemptions by general law. Such laws must specify the public necessity justifying the exemption and be narrowly tailored to accomplish its goal. While Chapter 119 must be liberally construed in favor of open government, exemptions are to be strictly construed so they are limited to their stated purpose.

The Legislature has recognized it is a public necessity that social security numbers held by an agency be made confidential and exempt from public disclosure. Social security numbers are of a sensitive personal nature and are often the link to an individual's personal, financial, medical or familial records. Release of a social security number is of concern due to the amount of sensitive personal information which can be acquired by its use. The disclosure of such number can provide access to private information about a person which could be used to perpetrate fraud upon that person or otherwise cause great harm to that person and his or her family.

There is an exception for responsible commercial use of the social security number. Responsible commercial use does not result in personal or financial harm to a person but allows more complete identity verification. Private sector enterprises rely on public records, which sometimes include social security numbers, as a means to "uncover fraud and identity theft, make sound credit determinations, and otherwise verify identities in order to conduct a vast amount of business transactions."

There are also state and federal statutes that exempt driver's license numbers. The Drivers Privacy Protection Act limits public access to certain parts of driver's license records. Florida law mirrors this, and also allows for the release of the information to government agencies for the purposes of carrying out their functions. The information may also be released under both state and federal law "for any other use specifically authorized under state law, if such use is related to the operation of a motor vehicle or public safety."

Criminal intelligence or investigative information containing identifying information regarding victims of certain sexual or child abuse offenses is confidential. For example, such identifying information must be redacted from the copy of a domestic violence report provided by a law enforcement agency to the nearest domestic violence center.

Information revealing the substance of a confession by a person arrested is exempt from disclosure until the case is adjudicated, dismissed or otherwise resolved. Identifying information on confidential informants or sources is also exempt from disclosure, regardless of whether such informants or sources may have been identified by other sources. Information revealing surveillance techniques or personnel is confidential.

Medical history records and medical diagnostic information are exempt from disclosure. Also, Baker Act reports prepared by law enforcement and required by statute to be made a part of the patient's clinical record are confidential. However, an incident report prepared after a specific crime has been committed, filed with the law enforcement agency as a record of that event and not made a part of the patient's clinical record, is not confidential and is subject to inspection and copying. While autopsy reports are public record, autopsy photos are confidential.

An agency may not delete information from a public record in the absence of a statute providing for the confidentiality or exemption of such information. Nor may an agency refuse to release an entire record because it may contain some confidential or exempt information; rather the agency is required to redact the exempt material and release the rest of the record.

If there is an exemption for information contained in a public record, the agency, in complying with the public records request, is not authorized to "cut corners." If, for example, an agency received a public records request for records that contained identifying information relating to a confidential informant, it would not be acceptable to simply delete the names and addresses of the informant from those records and release other identifying information; instead the agency is under a duty to review the entire record to ensure that all identifying information has been redacted. Even if it is considered impractical or burdensome to redact confidential information from its records, noncompliance with the Public Records Law is not excused.

One very important thing to note about redaction is making sure your method of redaction is actually effective. In one instance, a government agency used redaction software which appeared to black out the exempt portions of a document, but when the document was scanned, the portions were highlighted rather than removed. Always check the documents to avoid this type of problem. The term "redact" is statutorily defined to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information." Thus, redaction refers to altering a copy of the record rather than physically altering the original document.

There is a difference between records which the Legislature has designated as exempt from the Public Records Law and those which have been designated by the Legislature as confidential. Confidential information is not subject to inspection by the public and may only be released to those persons and entities designated in the statute. Exempt records are not subject to the mandatory disclosure requirements of the Public Records Law; an agency, however, is not prohibited from disclosing such records.

The First Amendment foundation maintains a website with an updated database of exemptions under Florida law. You can find it at www.floridafaf.org. If you have any further questions about exempt material, you may call the Attorney General's office at 850-245-0197 or visit our website at www.myflsunshine.com.

Open government isn't just good government- it's the public's right.