

Law enforcement officers, cellular telephone numbers

Number: INFORMAL

Date: January 27, 2004

Subject:

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Ms. Cindy A. Laquidara
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Dear Ms. Laquidara:

This is in response to your recent correspondence in which you asked whether the cellular telephone numbers of telephones provided to law enforcement officers and used in performing law enforcement duties are public records.

The right of every person to inspect and copy governmental records in Florida is expressed in both the Florida Constitution and the statutes. Article I, section 24(a), Florida Constitution, guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Pursuant to this constitutional provision, the Legislature may provide by general law for the exemption of records from the requirements of Article I, section 24(a). Any such exemption proposed by general law must state with specificity the public necessity justifying the exemption and must be no broader than is necessary to accomplish its purpose.[1]

This broad public policy of open records is reflected in Chapter 119, Florida Statutes, the Public Records Act. The Public Records Act guarantees every person a right to personally inspect and copy all state, county, and municipal records. Section 119.011(1), Florida Statutes, defines the phrase "[p]ublic records" to include

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Thus, business telephone numbers used to contact law enforcement officers, whether providing access to a desk telephone at the officer's workplace or to a cellular telephone carried by the officer while performing his or her official duties, would be a public record pursuant to the provisions of the law.[2]

Section 119.07(1)(a), Florida Statutes, requires the custodian of public records for an agency to make these records available for inspection and copying as provided therein. This section also

includes a number of exemptions from the inspection and copying requirements of the Public Records Act. Section 119.07(3)(i)1-3, Florida Statutes, exempts certain information about various classes of public officers and employees as follows:

"(i)1. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; 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). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from subsection (1) and s. 24(a), Art. I of the State Constitution.

2. The home addresses, telephone numbers, social security numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, 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 subsection (1) and s. 24(a), Art. I of the State Constitution. . . .

3. The home addresses, telephone numbers, social security numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from subsection (1) and s. 24(a), Art. I of the State

Constitution. . . ."

Exemptions from the public records requirements are to be strictly construed in light of the public purpose for adoption of the statute, *i.e.*, to open public records to the state's citizens to discover the actions of their government.[3] Further, if any uncertainty exists with respect to whether records should be made available to the public, this office is constrained to resolve such doubt in favor of public access.[4]

The original section 119.07(3)(i), Florida Statutes, exemption was brought into existence with the enactment of Chapter 79-187, Laws of Florida. As originally enacted, the exemption applied only to law enforcement personnel and their families; other classes of employees have been added over the years.[5]

The general rule of statutory construction is that when a statute is "clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." [6] However, where a statute is susceptible of more than one meaning, legislative history is helpful in ascertaining legislative intent. [7] The courts will not ascribe to the Legislature an intent to create an absurd or harsh consequence. [8] There is a strong presumption against absurdity in statutory provisions, and if language used may be interpreted in two different ways, the interpretation that does not lead to absurd consequences is favored by the court. [9]

When reviewing a statute, the court should consider the act as a whole, the evil to be corrected, the language of the act, the state of the law already in existence, and give the construction which comports with legislative intent. [10] In seeking legislative intent, it is appropriate to consider actions passed at prior or subsequent sessions as well as those passed at the same session. [11]

A review of the legislative history surrounding the adoption of Chapter 79-187, Laws of Florida, reflects that the initial House Bill [12] did not contain the exemption for the "home address, telephone number, and photograph" that was included in the final version that was enacted into law. Instead, this language was added during the legislative process. The staff analysis notes that the purpose of the amendment was to exempt from disclosure "certain personal information relating to law enforcement personnel and their families." [13]

Although the legislative history does not contain an extensive discussion as to the rationale for the addition of the exemption for "personal" information for law enforcement personnel, you state that you believe that the term "telephone numbers" should be read to include all telephone numbers used by an officer whether purchased by the agency or purchased by the officer for his or her use at home. However, such a result is at odds with legislative intent indicating that the purpose of the amendment was to exempt "personal information" from disclosure. Such a reading would exempt from disclosure a police officer's business phone number, which would be nonsensical.

The audiotape of the committee meeting [14] where the amendment was adopted indicates that it was the product of a consensus that the personal privacy of law enforcement officers and their families should be protected. [15] The tape recording includes the following discussion of the purpose of the amendment:

"Mr. Chairman: Senator Myers offers the pro-law enforcement amendment. The amendment is an amendment to page two between lines 21 and 22. Add the following subparagraph (m):

The home address, telephone number and photograph of law enforcement personnel, the home address, telephone number, photograph, and place of employment of the spouse and children of law enforcement personnel, and the names and locations of schools attended by the children of law enforcement personnel are exempt from the provisions of subsection (1). This is self explanatory.

Senator Myers: What we intend by this amendment, Mr. Chairman, that is to protect the private lives of law enforcement personnel in a very sensitive position from dangerous activity.

Mr. Chairman: Excellent amendment and everybody has agreed to it. Is there any objection to that amendment? If not, show the amendment adopted unanimously by those members of the committee present."

Thus, there is nothing in the legislative history of this provision which evinces a legislative intent that all telephone numbers used by the officers and employees mentioned in the exemption may be disclosed or withheld solely at the discretion of the officer, employee, or the employing agency. Such a result would permit code enforcement officers, for example, to decide unilaterally which members of the public would be entitled to reach them at work at their "direct" number. Moreover, as new categories of employees have been added to the terms of section 119.07(3)(i), Florida Statutes, the Legislature has noted that the addition of this protection to increasing classes of officers and employees would "in no way benefit the public or aid it in monitoring the effective and efficient operation of government." [16] Such a statement would be difficult to justify if the intended effect of the amendment was to allow employees to withhold their business numbers from some members of the public while allowing others free access to this information.

Instead, the more reasoned construction is that the Legislature intended that the term "home" modify both addresses and telephone numbers. For example, in 1994, the Legislature amended section 119.07(3)(i), Florida Statutes, to exempt the "home addresses and home telephone numbers" of code enforcement officers. The title of the act however referred to the creation of an exemption for the "home addresses and telephone numbers" of such officers. [17] A few years later, the Legislature modified section 119.07(3)(i), Florida Statutes, to add other employees to the exemption and this time the statute exempted the "home addresses, telephone numbers, social security numbers, and photographs" of the specified employees. [18] None of these proposals mentioned an intent to exempt business telephone numbers as well as home telephone numbers.

Moreover, subsequent legislative action indicates that the current language of section 119.07(3)(i)1., Florida Statutes, does not exempt all telephone numbers of law enforcement officers from the Public Records Act. During the 2003 Regular Legislative Session, both the House and Senate considered amendatory legislation that specifically addressed this matter. Senate Bill 1666 and House Bill 0123 provided for the amendment of section 119.07(3), Florida Statutes, to "expand the current exemption to also include cellular telephone numbers, electronic pager numbers, and user-specific electronic identification numbers or access codes of such

officers, and the identifying numbers contained in the billing records associated with those numbers and codes." [19] As expressed by the Senate staff analysis of SB 1666, "[t]he information exempted (not including information currently exempted under law) includes the following: cellular telephone numbers and the billing records of such cellular telephone numbers; . . . and user-specific electronic identification numbers or access codes for any electronic communications device issued by an employing agency and used in the course of employment in this state and the billing records of such identification numbers or access codes."

In addition, a similar exemption was offered during the 2002 Special Session C considering security issues, and a similar proposed committee bill was drafted and offered during the 2002 Regular Session. Despite lengthy discussion, neither of these 2002 bills was brought up for a vote. [20] Thus, evidence suggests that the Legislature considers cellular telephone numbers to be outside the scope of the current exemption in section 119.07(3)(i)1., Florida Statutes.

In contrast to the exemption contained in section 119.07(3)(i), Florida Statutes, the Legislature has spoken with clarity in at least one instance its intention to exempt both home and employment telephone numbers from the public records law. Section 119.07(3)(s)1., Florida Statutes, provides confidentiality for "[a]ny document that reveals the identity, *home or employment telephone number*, home or employment address, or personal assets of the victim of a crime" (e.s.)

It is significant that the original section 119.07(3)(i), Florida Statutes, exemption was adopted during a time when there was a clear demarcation between a business phone used in employment and a home phone or personal phone used at the officer's residence. [21] In 1979, business telephones could not be used anywhere but at a business and home telephones likewise could be used only at an officer's personal residence.

The subsequent explosion in the use of cellular telephones, however, has made it possible for law enforcement officers to be reached by telephone literally anywhere, including at their homes, while traveling, or at the office. Thus, the release of an officer's cellular telephone number, particularly if the officer is required to be available to be contacted by his or her agency on a 24-hour basis, could result in harassment by those (such as offenders or inmates) who could use this information to make repeated calls to the officer on the cellular telephone while he or she is at home with his or her family. This would appear to be the type of offensive behavior which the Legislature sought to curtail in 1979 with the original telephone number exemption. While officers could take steps to protect their telephone numbers from disclosure by purchasing and paying the bills for their own personal cellular phones, and then seeking reimbursement for any business calls made, this could be cumbersome or burdensome in some cases.

Accordingly, this office strongly recommends that the Legislature review this matter in the 2004 Legislative Session and consider once again the applicability of the Public Records Act to electronic communication devices that are used by law enforcement with a view toward reconciling the competing policy arguments [22] that are generated by this issue and ensuring that there are adequate safeguards to protect both the officers and their families while assuring accountability in the expenditure of public funds. Until such time, it is the position of this office that the cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure under

section 119.07(3)(i), Florida Statutes.

Sincerely,

Patricia R. Gleason
General Counsel

PRG/tgk

[1] Article I, s. 24(c), Fla. Const.

[2] It is noted that there are other exemptions which could remove certain cellular telephone numbers used by law enforcement personnel from public disclosure. For example, there are statutes which exempt telephone numbers of victims of certain crimes as well as those of undercover officers and confidential informants. See, e.g., s. 119.07(3)(c), (d), and (s), Fla. Stat. This opinion addresses the circumstances where no other exemption is applicable to the cellular telephone number.

[3] See *Henderson v. State*, 745 So. 2d 319, 324 (Fla. 1999); *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997), citing *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994), *rev. denied*, 651 So. 2d 1192 (Fla. 1995).

[4] See, e.g., Ops. Att'y Gen. Fla. 80-96 (1980), 80-57 (1980), and 79-75 (1979), and the cases cited therein.

[5] In 1985, the exemption was expanded to include former as well as current law enforcement officers. See Ch. 85-18, Laws of Florida. Subsequent legislation broadened the exemption to include other categories of employees and officers such as firefighters, correctional officers, prosecutors, judges, code enforcement officers, human resource managers, as well as certain employees of the Departments of Health, Revenue, and Children and Families.

[6] *Van Pelt v. Hilliard*, 78 So. 693, 694 (Fla. 1918).

[7] *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *State v. Jefferson*, 758 So.2d 661 (Fla. 2000).

[8] *City of St. Petersburg v. Siebold*, 48 So. 2d 291 (Fla. 1950); *Winter v. Playa del Sol, Inc.*, 353 So. 2d 598 (Fla. 4th DCA 1977).

[9] See Op. Att'y Gen. Fla. 44-81 (1944) at p. 488.

[10] *Foley v. State ex. rel. Gordon*, 50 So. 2d 179 (Fla. 1951); *Dade Federal Sav. & Loan Ass'n v. Miami Title & Abstract Division of American Title Ins. Co.*, 217 So. 2d 873 (Fla. 3d DCA 1969).

[11] *Watson v. Holland*, 20 So. 2d 388 (Fla. 1944).

[12] House Bill 1531, Florida House of Representatives, 1979 General Session.

[13] Senate Staff Analysis of HB 1531, dated May 16, 1979.

[14] Audiotape of meeting of the Senate Governmental Operations Committee, May 15, 1979.

[15] The amendment may have been generated by the same concerns expressed in another bill which was discussed at the same committee meeting where House Bill 1531 was introduced. At that meeting, Representative Bush spoke on behalf of House Bill 186 which would have allowed police officers to keep their home addresses, home telephone numbers and information about their spouses and children confidential during the criminal discovery process. The committee tapes contain this discussion about the purpose of the bill:

"There have been some abuses where in a situation, a defense attorney will ask how many children the police officer has and where they go to school, the route they take to school, where the wife might work, *the home number of the police officer*, the duties he works so he can make the determination when the police officer would be at home and when the wife would be at home alone. And accordingly, it becomes a matter of public record, the deposition, and anybody can look at the file and harass this police officer or the children or whatever." (e.s.)

House Bill 186 was later withdrawn as its Senate companion, CS/SB 40, was enacted into law. See Ch. 79-60, Laws of Florida.

[16] See, e.g., Ch. 95-170, Laws of Florida, in which s. 119.07(3)(i), Fla. Stat., was amended to include certain Department of Revenue employees.

[17] See Ch. 94-128, Laws of Florida.

[18] See Ch. 01-249, Laws of Florida.

[19] See House of Representatives Staff Analysis of HB 0123, dated April 15, 2003.

[20] See House of Representatives Staff Analysis of HB 0123 w/CS, dated April 15, 2003.

[21] The first commercial cellular system in the United States began operation on October 13, 1983, in Chicago, Illinois. National Academy of Sciences: *Managing Innovation: Cases from the Services Industries* (1988).

[22] Some of the policy arguments were noted in the Staff Analysis for House Bill 0123 as follows:

"An example of potential abuse was reported by the Tampa Tribune on February 15, 2003. In Tampa, a Sheriff's deputy accumulated more than \$6,000 in extra cellular telephone charges over the past two years. Many of the charges were for calls made to his girlfriend. Opponents to this bill argued that this abuse of a government cellular telephone would not have been discovered if this bill was current law.

The Orange County Sheriff's Office (sheriff's office) is a proponent of this bill and has stated that the exemptions are necessary in order to protect the safety of the law enforcement officer. The sheriff's office has also stated that public access to a law enforcement officer's cellular telephone number or pager number could hinder an officer's job performance if the officer is continually telephoned or paged by victims, witnesses, or the press."