Records, nature of mail received for public officials

Number: INFORMAL

Date: September 18, 1997

Subject:
Records, nature of mail received for public officials

The Honorable Larry Dale
Mayor of Sanford
Post Office Box 1788
Sanford, Florida 32772-1788

RE: PUBLIC RECORDS--UNITED STATES MAIL--MUNICIPALITIES--nature of mail received for public officials. Ch. 119, Fla. Stat.

Dear Mr. Dale:

Your correspondence to Mr. Wilkins at the Division of Library and Information Services has been forwarded to this office for assistance regarding the application of Florida's Public Records Law. You have asked substantially the following questions:

1) Is all mail received at a public agency automatically considered public record upon receipt, including correspondence which is not connected with official agency business or that is marked "personal"?

2) Is it legally required to open all mail upon receipt at a public agency, *e.g.*, Sanford City Hall?

3) Is there a right of public access to mail that has not yet been received by the person to whom it is addressed?

Informally, and in an effort to provide you with some direction, I offer the following comments.

Section 119.011(1), Florida Statutes, defines "[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."[1]

The Florida Supreme Court has interpreted this definition to encompass all materials received by an agency in connection with official business that are used to perpetuate, communicate, or formalize knowledge.[2] All such materials, regardless of whether they are in final form, are open for public inspection and copying unless the Legislature has exempted them from disclosure.[3]

Florida courts have recognized that an agency's responsibility to provide public records is as

broad in scope as the term "public records." The only delay allowed is the time it takes for the agency to locate the record, review it for exemptions, and copying the record if a copy has been requested.[4]

As discussed above, the Florida Supreme Court has concluded that all materials received by an agency in connection with official business that are used to perpetuate, communicate, or formalize knowledge are within the definition of "public records". Thus, this office concluded in a recent informal opinion that the Public Records law is applicable to mail which is received by a city in connection with the transaction of its official business.[5]

In that informal opinion this office suggested that policies and procedures should be established by charter, ordinance or rule for the handling of official mail. It may be appropriate to require that personal mail not be sent or received at an official's business address in order to avoid the appearance that certain correspondence is being kept from public disclosure.[6] The city may also consider establishing a policy for determining when official mail is received for purposes of inspection and copying under the Public Records Law.

Section 119.031, Florida Statutes, provides in part:

"Insofar as practicable, custodians of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used."

In light of this language, Attorney General's Opinion 93-16, concluded that, pursuant to Chapter 119, Florida Statutes, public records may routinely be removed from the building or office in which such records are ordinarily kept only for official purposes. The specific facts of that case involved the retention of public records in the home of a public official which this office suggested might constitute a violation of the Public Records Law. Thus, public records, including official mail, should not be removed from City Hall except when such removal is required for official purposes.

I trust that these informal comments will assist you in working with your city attorney to develop policies and procedures for handling official mail which may be received by the City of Sanford and in responding to Public Records requests for inspection and copying of these records.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosures: Op. Att'y Gen. Fla. 93-16 (1993); Inf. Op. to Mayor Harold M. Paxton, Jr., dated March 19, 1996

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[1] *See also* s. 119.011(2), Fla. Stat., which defines an "[a]gency" for purposes of the Public Records Law as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[2] *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980).

[3] *See, e.g.*, s. 119.07(3)(l), Fla. Stat., providing a limited work product exemption for agency attorneys.

[4] *Tribune Company v. Cannella*, 438 So. 2d 516 (Fla. 2d DCA 1983), *rev'd on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S. Ct. 2315 (1985).

[5] *See* Inf. Op. to Harold M. Paxton, Jr., Mayor of Kenneth City, dated March 19, 1996.

[6] *See Forsberg v. Housing Authority of City of Miami Beach*, 455 So. 2d 373 (Fla. 1984), in which the Florida Supreme Court determined that personal information provided by public housing tenants and prospective tenants was contained in public records open for personal inspection and no state or federal privacy right would prevent their inspection.