

Disclosure of names and addresses of grand jury

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Subject:

Disclosure of names and addresses of grand jury

The Honorable Steve Alexander
State Attorney
Seventh Judicial Circuit of Florida
251 North Ridgewood Avenue
Daytona Beach, Florida 32114-7505

Dear Mr. Alexander:

This is in response to your recent request regarding whether the names and addresses of jurors, as well as the designated foreperson, of a grand jury are subject to disclosure pursuant to section 119.07(1), Florida Statutes. If so, may potential grand jurors be informed that section 119.07(3)(k)2., Florida Statutes, allows specified persons to submit a written request for confidentiality of certain personal information when it is in the custody of a non-employing agency?

In sum, the names and addresses of grand jurors are privileged as part of the record of the grand jury proceedings and, therefore, are not subject to disclosure pursuant to section 119.07(1), Florida Statutes. In light of the response to your first question, no discussion of your second question is necessary.

Section 119.07(1), Florida Statutes, requires custodians of public records to allow inspection and copying of all documents, papers, letters or other materials, regardless of physical form, made or received in connection with the transaction of official business of an agency.[1] Moreover, section 24, Article 1, Florida Constitution, sets forth a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, unless the public record has been exempted by law pursuant to the constitutional provision, or specifically made confidential by the Constitution. Thus, all public records are open for public inspection and copying, unless the Legislature has exempted them from disclosure or they have been made confidential by law.[2]

Grand jury proceedings are secret and a grand juror is under direction to not disclose the nature or substance of the deliberations or vote of the grand jury.[3] Records prepared for use by the grand jury during the performance of its duties, therefore, are not subject to section 119.07, Florida Statutes.[4]

A Florida court has determined that a hearing ancillary or related to a grand jury session constitutes a proceeding that comes within the secrecy provisions applicable to grand jury proceedings.[5] Consistent with this conclusion, in Attorney General Opinion 90-48 (1990) this

office determined that grand jury subpoenas are an integral part of the grand jury proceeding to secure witnesses and, therefore, fall within the "absolute privilege" of the grand jury. Thus, it was concluded that grand jury subpoenas are not subject to disclosure under Chapter 119, Florida Statutes.[6]

The selection of the grand jurors and the identity of the individual grand jurors is part of the record of the grand jury proceedings and would, therefore, fall under the secrecy of such proceedings. The logical extension of the secrecy of the grand jury proceedings would be to protect the identity of the individual grand jurors. Protecting the identity of grand jurors avoids the potential of compromising the secrecy of the grand jury proceeding and limiting the freedom of the grand jurors to carry out their duties unencumbered by outside influence.

Section 905.27(1), Florida Statutes, precludes a grand juror, among others, from disclosing the testimony of a witness examined before the grand jury or other evidence received by it, except when ordered otherwise by a court. The statute allows disclosure of grand jury testimony or other evidence received by the grand jury when required to do so by a court for the following purposes:

- "(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;
- (b) Determining whether the witness is guilty of perjury; or
- (c) Furthering justice."[7]

Thus, the Legislature has provided a means whereby a judge has the authority to allow disclosure of grand jury testimony or evidence when, among other things, it will further justice. This creates a limited mechanism for access to information that would otherwise be privileged as a part of the grand jury proceedings.

In light of the privileged status of the names and addresses of grand jurors, the mechanism in section 905.27(1), Florida Statutes, could be used to obtain access to such information, while preserving the sanctity of the grand jury process. If an individual seeks access to the names and addresses of the grand jurors, the judge supervising the grand jury proceedings could use the authority granted in section 905.27(1), Florida Statutes, to determine whether the release of such information would further the ends of justice.

The secrecy provisions applicable to grand jury proceedings would also shield the identity of the grand jury's foreperson.[8] Practically, however, while the identity of the foreperson is initially privileged as a part of the grand jury proceeding, the foreperson's identity is made public by his or her signature on the grand jury's presentment or indictment when it is released.[9]

Thus, in light of the above observations, it is my opinion that the names and addresses of grand jurors are privileged as a part of the grand jury proceedings. The identity of the foreperson and alternate foreperson would initially be protected under the secrecy provisions applicable to grand jury proceedings, but in practice are made public by the release of the grand jury's indictment or presentment that is signed by the foreperson or alternate foreperson.

In light of the response to your first question, no discussion of your second question is

necessary.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 119.011(1), Fla. Stat., defining "[p]ublic records" and s. 119.011(2), Fla. Stat., defining "[a]gency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

[2] See *Wait v. Florida Power and Light Company*, 372 So. 2d 420 (Fla. 1979), in which the Court concluded that every public record is subject to the examination provisions of Ch. 119, Fla. Stat., unless a specific statutory provision can be found that exempts records from disclosure.

[3] See s. 905.24, Fla. Stat. (1993).

[4] See *Buchanan v. Miami Herald Publishing Company*, 206 So. 2d 465 (Fla. 3d DCA 1968), *affirmed*, 230 So. 2d 9 (Fla. 1969) (grand jury proceedings are "absolutely privileged").

[5] See *Palm Beach Newspapers, Inc. v. Doe*, 460 So. 2d 406 (Fla. 4th DCA 1984), hearing ancillary or related to a grand jury session is a proceeding falling under the statute making grand jury proceedings secret.

[6] Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, Fla. Stat. See, e.g., *Times Publishing Company v. Ake*, 645 So. 2d 1003 (Fla. 2d DCA 1994) (Judiciary, as coequal branch of government, is not agency subject to supervision or control by another coequal branch of government). See also *Wait v. Florida Power and Light*, 372 So. 2d 420 (Fla. 1979) (Supreme Court rule prescribing procedural standards takes precedence over a contrary provision of the Public Records Law). While the Public Records Law does not apply to the judiciary, the constitutional right of access to public records contained in s. 24, Art. I, Fla. Const., provides the public with a right of access to judicial records, excepting those made confidential by the Constitution, by law in effect on July 1, 1993, by court rules in effect on November 3, 1992, and by law in the future in accordance with the procedures specified in s. 24, Art. I, Fla. Const.

[7] See s. 905.27(1)(a)-(c), Fla. Stat. (1993).

[8] See *Palm Beach Newspapers, Inc. v. Doe*, *supra*, in which the court cites to *Douglas Oil Co. of California v. Petrol Stops*, 441 U.S. 211, 218-219 (1979), for an explanation of the need for secrecy in order to allow grand juries to function properly.

[9] See Rule 3.140(f), Fla. R. Crim. P., stating that an indictment shall be signed by the foreperson or the acting foreperson of the grand jury returning it. *And* see s. 905.28, Fla. Stat. (1993), acknowledging the public nature of a grand jury's report or presentment.