Public Records, law enforcement-child abuse records

Number: INFORMAL

Date: January 31, 2003

Subject:
Public Records, law enforcement-child abuse records

Mr. Lee O'Brien
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Re: PUBLIC RECORDS–LAW ENFORCEMENT AGENCIES–CHILD ABUSE–confidentiality of child abuse records in generated by law enforcement agency.

Dear Mr. O'Brien:

Thank you for contacting this office regarding the City of Orlando's recent request relating to the confidentiality of records of child abuse investigations when such records are generated by law enforcement agencies.

Your correspondence indicates that you see some conflict between the office's recent opinion Op. Att'y Gen. Fla. 93-54 (1993) and *Times Publishing Company v. A.J.,* 18 Fla. L. Weekly S474 (Fla. Sept. 9, 1993). Both deal with records of child abuse investigations when generated by an agency other that the Department of Health and Rehabilitative Services (H.R.S.)

In the *A.J.* case, The Supreme Court of Florida considered whether incident reports of a law enforcement agency were public records. Deputies had observed what they believed to be evidence of child neglect or abuse and had filed incident reports with the sheriff's department which were subsequently referred to H.R.S. under Ch. 415, Fla. Stat. (Supp. 1990). The Department of Health and Rehabilitative Services ultimately found no probable cause in the case.

A public records request was made for all records in the sheriff's possession regarding the alleged neglect or abuse. The sheriff believed that the initial incident reports were subject to disclosure but, prior to releasing them, advised the alleged perpetrators of the public records request. A motion was filed by several parties, including several of the subject minors, to impose confidentiality on all the documents related to the investigation.

Ultimately, The Supreme Court of Florida determined that "the public record at issue here [the incident reports] could not have been released in light of the objections raised by the minor children"[1] In the opinion it was observed that:

"It is clear that the child-protection statutes at issue here were designed to reconcile the

competing concerns of the state in cases of this type. Because of the severe harm that child abuse causes to society and the ease with which it is concealed, the state has a pressing and overriding need to investigate alleged child abuse even in cases like this one that later may prove to be unfounded. Yet, because even anonymous or baseless allegations can trigger such an investigation, the state has sought to accommodate the privacy rights of those involved. It has done so by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found. Such confidentiality is consistent with Florida's strong protection of privacy rights."[2]

The Court specifically limited its holding to the facts of the case before it and stated that "[w]e do not necessarily hold that our analysis here applies in any other context."[3]

Thus, under the rationale of this case, in situations where an incident report has been filed with a law enforcement agency during the initial stages of a child abuse or neglect investigation and before a determination of probable cause has been made, a statutory exception to disclosure may be claimed by a noncustodian who is a member of a class the exception was intended to protect. I would note that the Court recognized that the Legislature left the discretion of whether to provide such notification to the custodian of the records.[4]

In Op. Att'y Gen. Fla. 93-54 (1993), this office concluded that a law enforcement agency's arrest records of individuals charged with child abuse or neglect or the abuse, neglect or exploitation of aged persons or disabled adults are not encompassed by the provision of ss. 415.107 and 415.51, Fla. Stat. (1992 Supp.). After reviewing these statutes, it was concluded that they do apply to the records of the Department of Health and Rehabilitative Services and do not encompass a law enforcement agency's arrest report. The confidentiality provision of these statutes "must be read to apply to reports of abuse made to HRS and its records generated as a result of its investigation. Records generated by a law enforcement agency conducting a separate criminal investigation of child abuse would be subject to s. 119.07(3)(h), Fla. Stat. (1992 Supp.).

This office continues to be of the opinion that Op. Att'y Gen. Fla. 93-54 (1993) and the Court's opinion in *Time Publishing Company v. A.J., supra,* can be reconciled and must be followed by local governments. The case should be seen as applying to those situations which evolve prior to a finding of probable cause in a particular case and the Attorney General's Opinion clearly applies following a finding of probable cause when arrests are warranted. In those instances where the analysis in *A.J.* would apply, the custodian of public records has been delegated and the responsibility of determining whether to notify noncustodians who are members of the class which the statutory exception was intended to protect. The Court has specifically stated that the analysis of the case should not be extended to other factual situations.

Finally, if the custodian is in doubt as to his or her duty to release particular records, application should be made to the court for an expedited determination of the custodian's duty under the statutes. I trust that these advisory comments will assist you in resolving this matter and you will understand that this office can provide you with no more definitive response to your questions.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

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[1] *Times Publishing Company v. A.J.*, 18 Fla. L. Weekly S474 (Fla. Sept. 9, 1993).

[2] *Id.*, citing Art I, s. 23, Fla. Const.

[3] *Id.*, footnote 1.

[4] The Court stated that "the statutes contain no provision absolutely requiring the custodian of a record to notify any third party about the intended release of that record. Simultaneously, nothing prohibits notification. This is a matter the legislature apparently deemed fit to leave to the discretion of the custodian. Here, the sheriff gave notification out of concern that he otherwise might have subjected himself to suit. We cannot fault that determination." *Times Publishing Company v. A.J., supra* at footnote 1.