

Public records, law enforcement officer's address

Number: INFORMAL

Date: January 31, 2003

Subject:
Public records, law enforcement officer's address

Mr. Lee Reese, Chief of Police
City of Lake Worth

RE: PUBLIC RECORDS–PERSONNEL RECORDS–LAW ENFORCEMENT
OFFICERS–MUNICIPALITIES–STATE ATTORNEYS–applicability of Public Records Law to
home address of former law enforcement officer in personnel files of municipal police
department when requested by State Attorney's Office for service of criminal witness subpoenas.
S. 48.031(4)(a), F.S., s. 119.07(3)(k), F.S. (1988 Supp.)

Dear Chief Reese:

You have asked whether the home address of a former police officer of the City of Lake Worth Police Department may be disclosed by the department to the State Attorney's Office when requested for purposes of serving a criminal witness subpoena pursuant to s. 48.031, F.S.

Your letter indicates that the City of Lake Work Police Department accepts substituted service of criminal witness subpoenas for currently employed law enforcement officers pursuant to s. 48.031(4)(a), Fla. Stat. The statute provides that

"[s]ervice of a criminal witness subpoena upon a law enforcement officer . . . called to testify in an official capacity in a criminal case may be made . . . by delivery to a designated supervisory or administrative employee at the witness' place of employment if the agency head or highest ranking official at the witness' place of employment has designated such employee to accept such service. However, no such designated employee is required to accept service:

1. For a witness who is no longer employed by the agency at that place of employment"

In addition to such substituted service, s. 48.031(4)(b), Fla. Stat., authorizes service by mail for witness subpoenas in a criminal case that involves only a misdemeanor by sending the subpoena to the witness at his or her last known address at least 7 days prior to the date of the witness' required appearance. However, if service is made in this manner, the person who requests the issuance of the criminal witness subpoena shall be responsible for mailing the subpoena and for making the proper return of service to the court.

This statute, by its terms, authorizes substituted service of process and service by mail under certain circumstances but does not address or authorize the release or distribution of the home addresses of former law enforcement personnel.[1]

This office has consistently concluded that "personnel records" of employees paid from public funds or otherwise subject to legislative control are subject to public inspection.[2] However, the Public Records Law contains a specific exemption from the mandatory disclosure provisions of s. 119.07(1), F.S. (1988 Supp.), for certain information relating to law enforcement officers and their families. The statute provides:

"The home addresses, telephone numbers, and photographs of active or former law enforcement personnel; the home addresses, telephone numbers, photographs, and places of employment of spouses and children of active or former law enforcement personnel; and the names and locations of schools attended by the children of active or former law enforcement personnel are exempt from [the law]."[3]

The statute does not limit application of this exemption to any specified records nor does it authorize the release of such information to particular individuals or agencies to the exclusion of others.[4]

According to information provided to this office, there is a question whether the use of the term "exempt" rather than "confidential" in subsection (3)(k), *supra*, indicates a legislative intent to authorize disclosure of such information at the discretion of the custodian. You have been advised by the city attorney that, in his opinion, "the Police Department has the option of releasing [such information] to any person or agency it deems appropriate but need not release it to any person or agency."

An examination of the legislative history relating to the adoption of Ch. 79-187, Laws of Florida,[5] does indicate that the Legislature recognized a distinction between the terms "exempt" and "confidential." [6] Staff analysis of this legislation, prepared for consideration by the committee while drafting Ch. 79-187, Laws of Florida, indicates that "[if] the information was confidential it would not be revealed under any circumstances." The distinction between these two terms is clearly recognized: "[T]hus, exempt information could be revealed at the discretion of the agency." [7]

A statute must be construed in such manner as to ascertain and give effect to the evident interpretation of the Legislature as set forth in the statute, and where any ambiguity in the meaning or context of a statute exists, this must yield to the legislative purpose.[8] Further, the primary guide to statutory interpretation is the purpose of the Legislature.[9]

In light of the legislative history of Ch. 79-187, Laws of Florida, which recognizes a distinction between the confidentiality and exemption of certain records under the Public Records Law, I must conclude that the Legislature intended that the information exempted by Ch. 79-187 could be disclosed at the discretion of the custodial agency. In effect, s. 119.07(3)(k), F.S. (1988 Supp.), waives the *mandatory* disclosure requirements of s. 119.07(1), rather than making such records confidential under all circumstances or open to the public without reservation.

Thus, I am of the opinion that information from the personnel files of the City of Lake Worth Police Department which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's Office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S.

This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to assist you. The opinion expressed herein is that of the writer and does not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See *Carson v. Miller*, 370 So. 2d 10 (Fla. 1979) (the plain language of a statute must be read to mean what it says); and *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917) (the general rule is that where language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction).

[2] See AGO 75-8 (general personnel records are subject to Ch. 119, Fla. Stat.); AGO 73-51 (personnel records of civil service employees may not be maintained under two headings, one open and one confidential); and AGO 73-30 (records of salaries paid to assistant state attorneys are open to public inspection).

[3] Section 119.07(3)(k), F.S. (1988 Supp.). *And see* Inf. Op. to the Honorable Gerald A. Lewis, Comptroller, February 18, 1980, discussing the broad nature of the term "law enforcement personnel" and concluding in part that this exemption cannot be limited only to records of "criminal justice agencies." *Cf.* s. 914.15, Fla. Stat, which states that any law enforcement officer who provides information relative to a criminal investigation or in proceedings preliminary to a criminal case may refuse to disclose his residence address, home telephone number, or any personal information concerning his family, unless ordered by the court to do so; and s. 843.17, Fla. Stat., which makes it a crime for any person to maliciously, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his duties, publish or disseminate the residence address of any law enforcement officer while designating the officers as such, without authorization of the agency which employs the officer.

[4] See Inf. Op. to The Honorable Gerald A. Lewis, *supra*; Inf. Op. to The Honorable Jim Smith, Secretary of State, October 2, 1987.

[5] Chapter 79-187, Laws of Florida, was subsequently amended by Ch. 85-18, Laws of Florida, to extend the exemption contained in s. 119.07(3)(k), Fla. Stat., to *former* law enforcement personnel.

[6] See audio tape of the hearing of the Senate Committee on Governmental Operations, April 23, 1979, tape 1 of 2.

[7] See Senate Staff Analysis and Economic Impact Statement on HB 1531, May 16, 1979.

[8] *Smith v. City of St. Petersburg*, 302 So. 2d 756 (Fla. 1974).

[9] *Cape Development Company v. City of Cocoa Beach*, 192 So. 2d 766 (Fla. 1966).