

Records, access to list of people calling city official

Number: INFORMAL

Date: July 27, 1998

The Honorable Helen Voltz
Brevard County Commissioner
1515 Samo Road, Building B
Melbourne, Florida 32935

Dear Commissioner Voltz:

You ask whether a Palm Bay city council member's list of telephone numbers of people opposed to the construction of a solid waste transfer station is a public record under Chapter 119, Florida Statutes. According to your letter, the city council member apparently received several telephone calls at her home regarding the proposed transfer station and you are interested in obtaining a copy of the list of such telephone calls. Attorney General Butterworth has asked me to respond to your letter.

Upon reviewing the subject matter of your inquiry, however, it appears that this office is, regrettably, precluded from commenting upon this matter at this time. The Attorney General's Office is statutorily authorized to render opinions to public officials on questions relating their *own* official duties; this office, however, cannot comment upon the duties of one public official at the request of another official.[1] Your inquiry necessarily concerns the duties of a city council member, and in the absence of a request by the council member, this office is precluded from rendering an opinion on this issue.

Moreover, resolution of the issue is dependent upon the particular facts. A letter attached to your inquiry prepared by the city attorney on behalf of the city council member indicates that the facts may be in dispute. He states that there is no such list. This office has no authority to resolve questions of fact or mixed questions of law and fact.

Informally, I would note that the courts have considered a document prepared by a public agency in connection with the official business of the public agency which is intended to perpetuate, communicate, or formalize knowledge constitutes a public record.[2] A nonfinal document need not be communicated to anyone in order to constitute a public record, provided it was made or received pursuant to official agency business and is intended to perpetuate or formalize knowledge.[3] However, uncirculated materials which are merely preliminary or precursors to future documents and are not intended to serve as final evidence of the knowledge to be recorded fall outside the definitional scope of public records. For example, the court in *Orange County v. Florida Land Company*,[4] recently cited by the Florida Supreme Court in *Johnson v. Butterworth*,[5] described types of documents that would not come within the term "public records":

Document No. 2 is a list in rough outline form of items of evidence which may be needed for trial. Document No. 9 is a list of questions the county attorney planned to ask a witness. Document

No. 10 is a proposed trial outline. Document No. 11 contains handwritten notes regarding the county's sewage system and a meeting with Florida Land's attorneys. Document No. 15 contains notes (in rough form) regarding the deposition of an anticipated witness. These documents are merely notes from the attorneys to themselves designed for their own personal use in remembering certain things. They seem to be simply preliminary guides intended to aid the attorneys when they later formalized the knowledge. We cannot imagine that the Legislature, in enacting the Public Records Act, intended to include within the term "public records" this type of material.

I trust you will understand that the inability of this office to become directly involved in this matter at this time stems from statutory constraints and not from a lack of concern.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, stating that an opinion request must relate to the requesting officer's own official duties and that an Attorney General Opinion will not, therefore, be issued when an officer falling within s. 16.01(3), Fla. Stat., asks a question not relating to his or her own official duties.

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

[3] See generally *Church of Scientology Flag Service Organization, Inc. v. Wood*, Case No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), concluding that the drafts and notes of an autopsy performed by the medical examiner were public records; and Inf. Op. to Michael S. Davis, dated March 16, 1992, in which this office advised that a personnel director's retention of notes that were originally handwritten but were subsequently typed and kept by the director in his office for two years "might well be construed by a court as evidence of the director's intent to perpetuate the information contained therein."

[4] 450 So. 2d 341, 344 (Fla. 5th DCA), *review denied*, 458 So. 2d 273 (Fla. 1984).

[5] 1998 WL 378355 (Fla. 1998).