

Public Records, data processing software

Number: INFORMAL

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Mr. John Dellagloria
City Attorney of North Miami
Post Office Box 610850
North Miami, Florida 33261-0850

RE: PUBLIC RECORDS--MUNICIPALITIES--application of data processing software exemption to public records law. ss. 119.07(3)(o) and 282.303(8), Fla. Stat.

Dear Mr. Dellagloria:

You have asked whether section 119.07(3)(o), Florida Statutes, exempts the City of North Miami from providing digitized map data stored in the city's computer system to a member of the public who requests such information. You also ask whether an entity such as Florida Power and Light can have a trade secret if Florida Power and Light is a monopoly.

This office has no knowledge of nor are we authorized to comment on the terms of any contract or licensing agreement between the City of North Miami and a company supplying digitized map data to the city.[1] A review of the statute and its application indicates that the resolution of these issues may be particularly fact specific. In light of these concerns, the following informal comments are provided in an effort to assist you in advising the city.

The Legislature has created an exemption for data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret as defined in section 812.081, Florida Statutes. Section 119.07(3)(o), Florida Statutes (1996 Supp.), provides:

"Data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, as defined in s. 812.081 . . . are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. . . . As used in this paragraph:

1. "Data processing software" has the same meaning as in s. 282.303(8).[2]
2. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:
 - a. Collect, process, store, and retrieve information which is exempt from the provisions of subsection (1);
 - b. Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
 - c. Control and direct access authorizations and security measures for automated systems."

Thus, in order for the exemption in section 119.07(3)(o), Florida Statutes, to apply, two factors must be present: first, the licensing agreement must prohibit disclosure of the software, and

second, the software must meet the statutory definition of "trade secret" found in section 812.081, Florida Statutes.[3]

Further, section 815.04(3)(a), Florida Statutes (1996 Supp.), provides that data, programs, or supporting documentation which is a trade secret which resides or exists internal or external to a computer, computer system, or computer system network is confidential and exempt from section 119.07(1), Florida Statutes. The term "trade secret" is defined to mean

"the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes."[4]

The focus of the determination of information as a trade secret under the definition in section 812.081, Florida Statutes, appears to be the information itself and the purposes for which it may be used. Thus, I cannot say that a determination that a business may be a monopoly is dispositive of the validity of the claim that particular information is a trade secret within the definition set forth in section 812.081(1)(c), Florida Statutes.

I trust that these informal advisory comments will assist you in resolving these issues.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosure

[1] See Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions (copy enclosed).

[2] Section 282.303(8), Fla. Stat., defines "[d]ata processing software" to mean "the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs."

[3] See Ops. Att'y Gen. Fla. 90-102 and 90-104 (1990).

[4] See s. 812.081(1)(c), Fla. Stat.