



The Florida Senate

Interim Project Report 2003-205

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Children and Families Committee

Senator James E. "Jim" King, Jr., President

OPEN GOVERNMENT SUNSET REVIEW OF THE PUBLIC RECORDS EXEMPTION FOR LICENSURE OF FAMILY FOSTER HOMES, RESIDENTIAL CHILD CARE AGENCIES, AND CHILD PLACING AGENCIES (S. 409.175(16), F.S.)

SUMMARY

Prospective foster parents are required to provide to the Department of Children and Families an extensive amount of information that documents the families' capability to care for foster children. Some of this information is very personal information and, if available to the public, would result in families being unwilling to pursue or remain licensed for foster care. Once licensed and accepting foster children, the foster parents can be confronted with biological parents or relatives who are angry about the state's decision to remove their children and can attempt to locate and take the children or threaten the foster family.

Section 409.175(16), F.S., currently exempts from public disclosure stipulated identifying and locating information from the foster parent's licensing file. This exemption is presently subject to review under s. 119.15, F.S., the Open Government Sunset Review Act of 1995, for the purpose of determining whether the exemptions should be reenacted or repealed.

Staff recommends that the exemption in s. 409.175(16), F.S., be reenacted because it protects the safety of the child and the foster family, as well as shields the foster parents and their family from defamation. However, it is recommended that the language be modified to clarify the specific information that is exempt, to maintain the exemption of the information when such information is transferred to other files and to apply the exemption to applicants for foster care licensure.

BACKGROUND

Florida has a long history of providing public access to the records of governmental and other public entities. Currently, section 24(a) of Article I of the Florida Constitution provides the right of access to public records, stipulating that "every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer or employee of the state." This right of access to public records applies not only to the Legislative, Judicial and the Executive branches of government, but also to counties, municipalities, and districts, as well as each constitutional officer, board, commission, or entity created pursuant to law or this Constitution. The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee. [s. 119.07(1), F.S.]

Pursuant to section 24(c) of Article I of the Florida Constitution, exemptions may be provided by general law enacted by the Legislature which are based on an expressed statement of public necessity justifying the exemption and which are no broader than necessary to accomplish the purpose of the law.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a process to create and maintain exemptions to the requirements relating to access to public records. The process sets forth criteria that must be met and considered in a legislative review to be sufficiently significant to override the public policy of access to executive branch government records. In addition, exemptions granted pursuant to s. 119.15, F.S., are repealed on October 2nd of the fifth

year after enactment of the exemption, unless the Legislature reenacts the exemption.

In considering the creation or continuation of an exemption s. 119.15(4)(b), F.S., requires that the exemption serve a public purpose. The public purpose served by this exemption must be sufficiently compelling to prevail over the public policy of open government and must not be accomplishable without the exemption. The exemption authorized must not be broader than is necessary to meet the public purpose.

The public purpose served by the exemption must meet one of the following purposes as set forth in s. 119.15(4)(b), F.S.:

- “1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”

The Legislature is to consider, in determining whether to exempt or to make public certain records, if damage or loss as specified in the latter two purposes above would occur with making the records public. [s. 119.15(4)(c), F.S.]

Pursuant to s. 119.15(4)(a), F.S., the Legislature is also required to consider as part of the review process prior to the scheduled repeal, the following questions:

- “1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?”

The exemption provided pursuant to s. 119.15, F.S., must allow for the greatest public access to the records as is possible while meeting the purpose of the exemption. The language of the exemption must be uniform and clearly specify the section of Florida Statute from which it is exempt. Finally, s. 119.15(4)(e), F.S., provides that neither the state nor other public bodies can be made a party to a suit or incur liability as a result of the repeal or reenactment of an exemption.

Family Foster Homes

The Department of Children and Families is directed to establish and administer a program for children found dependent by the court under ch. 39, F.S., and their families (ss. 409.145 and 409.165, F.S.). Included in this program are foster homes and other settings that can offer shelter and care to the dependent children when they must be placed away from their families. Foster homes are private residences that provide 24-hour care for children and can be found in the form of emergency shelter family homes, family foster homes, family foster group homes and specialized foster homes for children with special needs [s. 409.175(2)(e), F.S.].

In order for a child to be placed in a foster home, the home must be licensed [s. 409.175(4), F.S.]. Section 409.175(5), F.S., directs the Department of Children and Families to adopt rules for the licensure of family foster homes and sets forth minimum requirements for licensure which include such aspects as the operation of the foster family home; the provision of food, clothing, supplies and services to the foster children; the safety and cleanliness of the premises; the ratio and supervision of children; the moral character of the personnel; and the financial ability of the foster parents to provide care. Chapter 65C-13, F.A.C., Substitute Care of Children, contains the administrative rules for licensing of family foster homes.

Section 409.175, F.S., further delineates a number of provisions related to the licensing of foster parents including background screening requirements; inspections of the homes by the local health departments; pre-service and in-service training requirements; the ability of the department to deny,

suspend or revoke a license and grounds for such actions; actions the department may take to ensure compliance with the licensing requirements; and the provision of general liability coverage for family foster homes through the Division of Risk Management.

A number of potentially sensitive documents are being obtained on applicant foster parents as a result of these requirements and the department's need to determine the suitability of individuals to be foster parents. Examples of such documents include medical history, financial information, and neighbor references. While important to the department in determining the suitability of individuals to be foster parents, it is information that is often very personal and private. It has been reported that the availability of this information to the public can discourage potential foster parents from applying for licensure.

One piece of information that is particularly sensitive to the foster child is the location of the foster home. Access to the location of the placement of the children removed from their parents can place the child in danger of being removed from the foster home by the parents, thus placing the child in continued danger of abuse or neglect, and can place the foster family in danger of harm from the parents or caregiver.

Section 409.175(16), F.S., provides an exemption to the public records law so that much of the information that would identify the location of the foster home would not be disclosed. This exemption applies to the following information contained in the foster parents' licensing file: 1) the foster parents', spouse's, minor children's and adult household members' home, business, work, child care or school addresses, telephone numbers, social security numbers, and birth dates, as well as any photographs of such persons; 2) the floor plan of the foster home; 3) identifying information about the foster parents and their household members in neighbor references; and 4) any identifying information about the foster family contained in similar sensitive personal information that the foster parents provide to the department. This exemption applies not only to licensed foster parents, but also to foster parents who later become adoptive parents. This public records exemption is subject to the Open Government Sunset Review Act of 1995 and is repealed effective October 2, 2003, unless reenacted by the Legislature.

METHODOLOGY

Staff reviewed relevant statutory provisions, contacted a sample of district offices responsible for the release of public records, surveyed the Department of Children and Families, interviewed and surveyed representatives from the Florida State Foster and Adoptive Parent Association, and reviewed the response to a survey prepared by the House Committee on State Administration.

FINDINGS

The Department of Children and Families reports that it is necessary to maintain the public records exemption found in s. 409.175(16), F.S. Continued exemption of the identified information in the foster parent licensure file is needed to "safeguard personal information on the foster parents and provide some level of safety to foster parents and the foster children." If the exemption is not re-enacted, the safety of the foster parents, their families and the foster children in their care could be jeopardized by unauthorized visits from a foster child's biological family or other individuals. In addition, repeal of the exemption would negatively impact the department's ability to retain foster families and, thus, limit the ability to match foster children with the most appropriate family settings.

In their survey responses and answers to questions from staff, representatives from the Florida State Foster and Adoptive Parent Association reported that the public records exemption for certain information in the licensing files provides for the protection and safety of the foster families. Without the exemption, foster families would be at risk of the irate birth families who attempt to remove the child. In addition, representatives report the exemption affects the retention of foster parents. Prior to the adoption of this exemption, when foster parents found out the information they provided was being made available to the public, they would often request that their license be terminated. It was also noted that the districts have been effectively keeping the information out of public view.

The intent of this public records exemption based on the original statement of necessity is to exempt personal and sensitive information about the foster parents and their families, as well as information that would reveal the location of the foster parents and the child placed in the foster home. The specific

exemptions provided in statute attempt to balance protecting the safety of the child and foster parent, as well as protecting the foster parents from the release of potentially defamatory information, with allowing for public scrutiny of the information that speaks most specifically to the abilities and practices of the foster parents.

There have, however, been varying interpretations of this exemption. Through contact with district Department of Children and Families' offices regarding circumstances under which information is released, staff discovered that the statute is often being interpreted to exempt the identification of the foster parents and family and the identifying information from the sensitive and personal information on the foster families. While the specific information items delineated in the statute that facilitate locating the family and home are being withheld, it appears that there is confusion as to whether the name of the foster parents and other household members is exempt as part of the identifying information. As a result, information apparently intended to be made available, specifically the names of the foster parents and household members, are often not being released. Also, while consistent with the current language, the extent to which sensitive information is actually protected with the removal of identifying information can be questioned, especially given that often the requestor of the licensing file documents already knows the name of the foster parent.

Other Florida Statutes provide for the exemption from public disclosure of some of the information on foster parents that would be considered sensitive and personal, such as bank account and credit card numbers [s. 199.07(3)(dd), F.S.], or mental health clinical records [s. 394.4615(7), F.S.]. However, other information such as personal assets and much of the medical history information provided by the parent to the department, could be available to the public upon request without the protection provided by s. 409.175(16), F.S.

Section 409.175(16), F.S., applies solely to the identified information in the foster parent's licensing file and to foster homes that have actually been licensed, including families who discontinue their foster home licensure to become adoptive parents. However, some of the information in the licensing file is utilized in other forms and held in other files. For example, since the initial enactment of this provision, there have been advancements in the use of computers

for the management of all child protection system components, including the foster care program, resulting in exempted information being included in computer files. In addition, some of the information is held in other departments' files because other agencies are responsible for conducting parts of the licensure process. An example is the inspections conducted by the local Health Departments. Copies of the inspection reports are not only provided to the Department of Children and Families for the licensing files but are also maintained in the local Health Department files. The exemption of the locating and sensitive information on foster parents does not apply if the information is held by or transferred to other records. Also, not included in the exemption are those families who have applied to become foster parents and provided the necessary documentation but whose application was denied and families who are no longer licensed but have not become an adoptive parent. The sensitive information contained in their files is currently fully accessible to the public.

After reviewing the family foster care exemption, the questions that must be considered pursuant to s. 119.15(4)(a), F.S., can be answered as follows:

1. What specific records or meetings are affected by the exemption? – This exemption applies to specific information within the licensing file of foster parents. The exact information that is to be exempted is not completely clear, however. Specific items related to both the location and identity of the foster parents and family members are delineated, as is the floor plan for the home which protects the location of the foster child within the home, and “identifying information” in neighbor references and other personal sensitive information. However, the names of the foster parents and family members are not set forth as exempted information. It is not clear whether the names of the foster parents and family members are to be exempted given the later references to “identifying information.” It is also not evident whether any sensitive personal documents themselves are protected.
2. Whom does the exemption uniquely affect, as opposed to the general public? – This exemption applies to licensed foster parents, their spouses, their minor children and other adult members of the household. Foster parents who later become adoptive parents would continue to receive this exemption.

3. What is the identifiable public purpose or goal of the exemption? – Based on the original statement of public necessity, this exemption is to protect information of a personal, sensitive nature. Specifically, the exemption is intended to protect information that would provide the location of the foster family and their home. Preventing the disclosure of the foster family’s location protects the safety of the foster family and foster children from the biological parents and relatives who could abduct the child or threaten or cause injury to the foster family for their role in the parents’ separation from their child.

In addition, the exemption is intended to protect the sensitive and personal information needed by the department to determine the suitability of applicants for foster home licensure. Foster parents and their families, while willing to expose their personal information to a limited extent for the purpose of licensure, are not always willing to expose such private information to the full public because of the damage it could cause their families and their reputations.

These goals of the exemption remain sufficiently compelling to override the public policy that all the information in these records be available to the public. While, s.119.15 (4)(b), F.S., stipulates that only information that would identify the individuals be exempted, in the situations with these foster families, only exempting the identifying information within the sensitive, personal information may not fully serve the purpose since the identity of the foster parents is often already known, thus revealing the identity of the sensitive information.

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? – The information exempted by s. 409.175(16), F.S., can be obtained through alternative means but not readily. This section of law provides that the information is not exempt from public disclosure if otherwise ordered by the court. In addition, foster parents are identified in s. 39.701(5), F.S., as a party to which a notice of a judicial review hearing must be served. As such, they can be identified to all the parties to the court proceeding as being noticed. The department reports that, for the most part, the districts are careful about revealing specific information, referring generically to “the

placement through the department.” However, some districts may be actually including the name and address of the foster parent which is made available to all the parties to the case.

The exemption provided for in s. 409.175(16), F.S., generally meets the criteria stipulated in s. 119.15(4), F.S., for reenactment. However, modification is needed to the language to clarify that locating and sensitive personal information, not identifying information, is exempt. In addition, once the information is made exempt, it should remain exempt regardless of where the information appears, and it should apply to individuals who have provided the sensitive personal information as part of the licensure application process, regardless of whether the license is approved or is no longer in effect. These revisions would equate to a substantial amendment to the exemption and, pursuant to s. 119.15(3), F.S., would require another repeal in 5 years.

RECOMMENDATIONS

Staff recommends that the exemption in s. 409.175(16), F.S., be reenacted but with modifications. The exemption should clearly stipulate the information that is exempted, maintain the exemption for information transferred to other files, and be extended to applicants for licensure and families who discontinue their licensure.