



The Florida Senate

Interim Project Report 2003-206

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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 ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE (S. 741.465, F.S.)

SUMMARY

The Address Confidentiality Program was created to assist victims of domestic violence who are establishing different residences to maintain the confidentiality of their new location in order to prevent the assailant from finding them. Through this program, the Attorney General provides participants with a substitute address to use for their mail and their interactions with state government systems. In creating this program, the Legislature provided for the program participants' actual address, telephone number and social security number to be exempted from public disclosure. 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Open Government Sunset Review Act of 1995, for the purpose of determining whether the exemptions should be reenacted or repealed.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 exemptions in s. 741.465 F.S., be reenacted because it meets the criteria in s. 119.15, F.S., for their reenactment and it is the underpinning for the entire Address Confidentiality Program. However, it is recommended that this exemption be modified to exclude the social security number from the information receiving the protection of this provision.

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 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.¹

Pursuant to s. 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.²

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 or 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.

Address Confidentiality Program

The Address Confidentiality Program assists persons who are victims of domestic violence and fear for the safety of themselves, their children or an incapacitated person by providing them with an alternative address to prevent the assailants or probable assailants from finding them. Sections 741.401 through 741.465, F.S., set forth the elements of the program. The purposes of these provisions are to allow local and state agencies to accept the alternative address of program participants in lieu of their actual address, to enable state and local agencies to respond to public records requests without disclosing the actual address of the domestic violence victim, and to facilitate the necessary interagency cooperation to provide program participants with confidentiality of their addresses.³

The Attorney General is responsible for the operation of the Address Confidentiality Program. Individuals in state and local agencies, including each of the domestic violence centers, are designated and trained to assist persons to apply for the program. To receive the services of the Address Confidentiality Program, an individual must submit an application to and be certified by the Attorney General.

Section 741.403(1), F.S., stipulates the minimum requirements for the application process. To be eligible for the program, the designated applicant assistant must have good reason to believe that the individuals, their children or the incapacitated person is a victim of domestic violence and fears for the safety of themselves, their children or the incapacitated person. For the purposes of this program, “domestic violence” is an act as defined in s. 741.28, F.S., which includes any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment or any criminal offense resulting in injury or death committed by one household member on another. Household members include spouses and former spouses, as well as persons living together or who have had a child together and persons related by blood or marriage. In order for domestic violence to have occurred, the victim and perpetrator must have lived together at some point in time, with the exception of those who have had a child together. Section 741.402(3), F.S., stipulates that, for the purposes of the Address Confidentiality Program, domestic violence includes threats of domestic violence

regardless of whether the acts or threats have been reported to law enforcement.

Individuals are certified as program participants for up to 4 years.⁴ This certification can be cancelled if the applicant uses false information in the application, obtains a name change, changes residence and does not notify the Attorney General 14 days prior to the change, or if mail forwarded to the participant is returned undeliverable or service of process documents are returned to the Attorney General.⁵ Currently, there are 199 families certified as program participants in the Address Confidentiality Program, 84 of whom also applied on behalf of their children for an additional 152 children who are participating as part of the families certified. Of these 199 families, 23 of them enrolled in FY 1998-1999, 53 enrolled in FY 1999-2000, 70 enrolled in FY 2000-2001 and as of April 29th, 53 had enrolled in 2002. Since the program's inception, 41 of the program participants have had their certifications cancelled: 11 because the participants changed their names, 19 because either mail forwarded by the Attorney General was returned undeliverable or service of process was not successful, 10 participants voluntarily cancelled their certification and 1 certification was cancelled as a result of an individual's death.⁶

Criminal penalties as follows are provided for persons who misuse the program and persons who attempt to obtain a participant's actual address:

- Providing false information in an application is a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.
- Entering the program to evade criminal prosecution or civil liability is a felony of the third degree, punishable as provided in ss. 775.082, 775.083 or 775.084, F.S.
- Attempting to gain access to the actual address of a participant by fraud is a felony of the third degree, punishable as provided in ss. 775.082, 775.083 or 775.084, F.S.⁷

An exemption to s. 119.07(1), F.S., of the public records law and s. 24(a), Article 1 of the State Constitution, is provided for the address, telephone number and social security number of the participants in the Address Confidentiality Program. This exemption specifically permits disclosure of this information under the following circumstances: to law enforcement to execute an arrest warrant, if directed by a court order, or if the certification has been cancelled. This provision is scheduled to repeal on October 2,

2003 unless reviewed and re-enacted by the Legislature.

The Attorney General is prohibited from disclosing the participant's actual name, address (other than the substitute address provided by the Attorney General) or telephone number. The only exceptions provided are to law enforcement for the execution of an arrest warrant, if directed by a court order, or if the certification has been cancelled.⁸

When interacting with state or local governmental entities, the program participant uses the designated address provided by the Attorney General. Examples of some of the agencies which have worked with Address Confidentiality Program participants include the Department of Revenue for child support enforcement, the Department of Highway Safety and Motor Vehicles for drivers license and vehicle titles, Department of Children and Families for TANF and food stamps, Department of State for professional licenses, county social services and various school districts. State and local governmental entities are to accept this designated address in lieu of a participant's actual address. Governmental entities may request a waiver of this requirement, and the Attorney General may grant this waiver if the entity has a bona fide statutory or administrative requirement for the actual address, the entity has explained how using the substitute address will prevent it from meeting its obligations under law, the actual address will only be used for this statutory or administrative purpose, the agency has identified the specific record for which the waiver is requested, and the individuals who will have access to this record have been identified.⁹

Specific provisions are made for program participants who participate in the election process. Section 741.406, F.S., provides for program participants to vote by absentee ballot. The actual address is necessary to determine the particular ballot to be provided to the participant. However, the statute prohibits the supervisor of elections from making the participant's name, address and telephone number available to the public, with the exception of law enforcement to execute an arrest warrant and by a court order.

Section 119.07(3)(s), F.S., also provides to victims of a crime, including victims of domestic violence, an exemption to the public records law for the identity, home or work address and phone number, and personal assets of the victim. However, this exemption is only available if the actual crime of domestic violence has

been committed. It is not available if the threat of a domestic violence crime exists. The provision also does not provide a mechanism for the victim to access governmental services without revealing the address. In addition, victims who, as a result of their cooperation in an investigation of a serious crime become at risk of violence, may be relocated for up to 1 year and identifying and locating information on the victims and their families is exempt from public disclosure.¹⁰ This exemption has the same and even further limitations as s. 119.07(3)(s), F.S.

METHODOLOGY

Staff reviewed relevant statutory provisions, interviewed key stakeholders, surveyed the Attorney General, and reviewed the response to the House Committee on State Administration's survey.

FINDINGS

In its response to the legislative surveys, the Attorney General recommends that the public records exemption for the address, telephone number and social security number of participants in the Address Confidentiality Program be reenacted. This exemption is considered necessary by the Attorney General because it provides "an added security measure for victims of domestic violence" and "enables state and local governmental agencies to respond to requests for public records without jeopardizing the safety of a domestic violence victim by disclosing his or her actual address." Once the victim of domestic violence has relocated away from the abuser, both the program and this exemption enables participants to keep their addresses confidential and allows governmental agencies to respond to public records requests without jeopardizing the safety of the participants. The Attorney General contends that the "exemption is a valuable part of an overall safety plan, which assists victims of domestic violence who have escaped their abusive environments to try and live safely away from their assailants." If the exemption is not re-enacted, an abuser would be able to locate the victims of domestic violence through a public records request.

The Florida Coalition Against Domestic Violence reports that the Address Confidentiality Program is an effective program and considered valuable by the local domestic violence centers. While available for those situations where relocation is necessary, it is not overly used. Each domestic violence center has an individual who is trained to handle Address Confidentiality Program applications. A massive training was

conducted by the Attorney General when the program was first implemented, and training is conducted each year for the application assistants in the centers. Representatives from some of the governmental entities that have worked with participants of the Address Confidentiality Program were contacted, including the Department of Revenue, Department of Highway Safety and Motor Vehicles, and the Supervisor of Elections. Each of the representatives reported that the program has run smoothly. For the Child Support Enforcement program and issuance of motor vehicle titles, the use of the Address Confidentiality Program substitute address has not presented a problem. These entities have been able to offer their services to the participants and even offer additional protections such as protecting the release of the name in their systems. The supervisor of elections contacted outlined a carefully protected process where the name and actual address are obtained, but only two individuals have access to the information which is examined before the elections to determine the appropriate ballot to send to the individual.

A few schools that enrolled students of families participating in the Address Confidentiality Program were contacted regarding the operation of the program as it pertains to provision of school services. The school services for which the actual address and phone number of the parents are particularly important are verifying the school zone, providing bus services, and having an emergency contact for the parent. For some schools, the ability to provide these services necessitated the actual address and phone number. However, other schools were able to accommodate the parents without the actual address and phone number. It appears that using the Address Confidentiality Program address and not requiring the parents to provide their actual addresses and phone numbers is doable but administratively more time intensive. Section 741.405, F.S., also provides a mechanism for agencies to request a waiver from the Attorney General from the use of the Address Confidentiality Program address which would accommodate problems that were truly not resolvable.

After reviewing the Address Confidentiality Program and its public records 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? --- The actual addresses, telephone numbers and social security numbers of the participants in the Address Confidentiality Program are the specific information items that are

exempt pursuant to the public records exemption in s. 741.465, F.S. This provision does not stipulate the specific records in which this information would be provided the exemption. However, when this provision is read with the sections governing the Address Confidentiality Program (ss. 741.401 through 741.409, F.S.), it appears the statutes contemplate that the exemption applies to the specified information in the program records held by the Attorney General, not in records held by other governmental agencies. An Attorney General's opinion dated October 6, 1998, offered the opinion that the exemption applies only to the records held by the Attorney General.

2. Whom does the exemption uniquely affect, as opposed to the general public? --- The exemption affects only individuals who are program participants in the Address Confidentiality Program. Participants of this program must be victims of domestic violence as defined by s. 741.28, F.S., including those who have been victims of threats of acts of domestic violence, regardless of whether these acts have been reported to law enforcement. Participants must also submit an application and be certified by the Attorney General as a program participant.
3. What is the identifiable public purpose or goal of the exemption? --- This exemption protects information of a sensitive and personal nature, specifically the new location of a victim of domestic violence to prevent the assailant from finding the victim. The release of this information would jeopardize the safety of the victim, since, if the actual address is part of a public record, it is accessible to the public, including the assailant. With the exception of the social security number, only the information that would facilitate the location of the victim is made exempt, i.e., the actual address and the telephone number. The social security number does not appear to be an information item that would facilitate location and was provided a general exemption in s. 119.072, F.S., by the 2002 Legislature (ch. 2002-256, L.O.F.). In addition, the social security number is not requested by the Attorney General in the application process and, therefore, not usually held in their records for which the exemption would provide protection.
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? --- It appears that

the only way the information made exempt from the public records law can be made available through alternative means is if the program participant provides the information to a governmental entity. The program participants are advised of the importance of not disclosing the information to an agency. This public records exemption does not apply to private companies, such as telephone companies, power companies and insurance agents, and as a result, they are not required to accept the Address Confidentiality Program address. The program participants are advised to explore other options with the private agencies when they will not accept the Address Confidentiality Program substitute address.

Also, while the telephone number is a location information item protected by this exemption, it is not a piece of information that state and local governmental entities are prohibited from requesting from participants. The telephone number is not handled in the same manner as the actual address due, in part, to the absence of a similar substitute mechanism for telephone calls. While some state and local governmental agencies may not request the participant's phone number in an effort to further protect the domestic violence victim, some of these agencies may require this information providing an avenue of contact with the victim. At this time, problems regarding the provision of phone numbers have not been raised, and there is not a mechanism in place to provide a substitute phone contact between agencies and participants as is provided with the program's substitute address. However, the Attorney General needs this information for contacting the participants, and the exemption of the phone number from public disclosure by that office provides necessary protection to participants who have been successful in their attempts not to disclose this piece of information.

The exemption provided for in s. 741.465, F.S., meets the statutory criteria in s. 119.15(4), F.S., for reenactment. However, the social security number is now provided an exemption from public records disclosure through another provision and no longer needs to be addressed in this exemption. Also, the specific records to which the exemption applies should be clarified.

The exemption provided for in s. 741.465, F.S., is the foundation of the Address Confidentiality Program. Without this exemption, the location of victims of

domestic violence would be more readily available through the public records of the numerous state agency systems which citizens consistently avail themselves.

RECOMMENDATIONS

Staff recommends that the exemptions contained in s. 741.465, F.S., be reenacted and modified to remove the social security number from the exempted items and to specify that the exemption applies to the records held by the Attorney General.

¹ Section 119.07(1), F.S.

² Section 119.15(4)(c), F.S.

³ Section 741.401, F.S.

⁴ Section 741.403(3), F.S.

⁵ Section 741.404, F.S.

⁶ Attorney General's responses to House and Senate surveys

⁷ Section 741.403, F.S.

⁸ Section 741.407, F.S.

⁹ Section. 741.405, F.S.

¹⁰ Sections 914.25 and 914.27, F.S.