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Committee on Children, Families, and Elder Affairs

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 741.465, F.S., ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE

Issue Description

The Address Confidentiality Program for victims of domestic violence (ACP) is established in ss. 741.401 through 741.465, F.S., and administered by the Office of the Attorney General. The ACP allows individuals who are attempting to escape from actual or threatened domestic violence to establish new addresses and prevent their assailants or probable assailants from finding them.

When the Legislature established the ACP, it also enacted a public records exemption for ACP participants. In part, the public records exemption exempts from public disclosure the names, addresses, and telephone numbers of ACP participants contained in voter registration and other voting records held by the Supervisor of Elections or by the Department of State.¹ This exemption is subject to review under the Open Government Sunset Review Act (the Act) and stands repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment.²

Background

Florida Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.³ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.⁴

Consistent with this constitutional provision, Florida's Public Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.⁵

The term "public record" is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law

¹ Section 741.465(2), F.S.

² Chapter 2005-279, s. 3, L.O.F.

³ Sections 1390, 1391 F.S. (Rev. 1892).

⁴ Fla. Const. art. I, s. 24(a).

⁵ Section 119.07, F.S.

or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency⁷ in connection with official business, which are used to “perpetuate, communicate or formalize knowledge of some type.”⁸ Unless made exempt, all such materials are open for public inspection as soon as they become records.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹² A bill enacting an exemption or substantially amending an existing exemption¹³ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁴

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.¹⁵ If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁶ If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.¹⁷

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.¹⁸ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁹

Pursuant to the Act, an exemption may be created, revised or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.²⁰ An identifiable public purpose is served if the exemption meets one of three specified purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

⁶ Section 119.011(12), F.S.

⁷ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁹ *Tribune Co. v. Cannella*, 458 So.2d 1075, 1077 (Fla. 1984).

¹⁰ Fla. Const. art. I, s. 24(c).

¹¹ *Id.*

¹² *Id.*

¹³ Pursuant to s. 119.15 (4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

¹⁴ Fla. Const. art. I, s. 24(c).

¹⁵ *WFTV, Inc. v. School Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA), *review denied*, 892 So.2d 1015 (Fla. 2004).

¹⁶ *Id.*

¹⁷ *Id.* at 54.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(5)(a), F.S.

²⁰ Section 119.15(6)(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 would be defamatory . . . or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize the safety of such individuals; **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 would injure the affected entity in the marketplace.²¹

The Act also requires the Legislature to consider six questions that go to the scope, public purpose and necessity for the exemption.²²

Address Confidentiality Program for Victims of Domestic Violence

The Address Confidentiality Program for victims of domestic violence (ACP) is established in ss. 741.401 through 741.465, F.S., and administered by the Office of the Attorney General.²³ Individuals who are attempting to escape from actual or threatened domestic violence sometimes need to establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the ACP are to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.²⁴

Any victim of domestic violence who relocates to an address unknown to her abuser is eligible to participate in the ACP. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city, and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs in the Office of the Attorney General serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.²⁵

Section 741.406, F.S., contemplates that ACP participants who wish to participate in the election process will vote by absentee ballot. Although an ACP participant must provide her actual address to the Supervisor of Elections so that the appropriate absentee ballot can be transmitted to her, the statute expressly prohibits the Supervisor of Elections from including the participant's name, address and telephone number in any list of registered voters available to the public.²⁶ The participant thus can vote in the elections for which she is otherwise qualified, while information that might be used to locate her remains protected.

²¹ *Id.*

²² Section 119.15(6)(a), F.S. See the Findings and/or Conclusions section of this report for a review of the six questions as they relate to this particular exemption.

²³ See also, Rules 2A-7.001 through 2A-7.009, F.A.C.

²⁴ Section 741.401, F.S.

²⁵ Address Confidentiality Program – Bureau of Advocacy and Grants Management Office of the Attorney General (Florida), on file with the Senate Committee on Children, Families, and Elder Affairs.

²⁶ Section 741.406, F.S.

During 2007-2008, the ACP had 610 active participants and received 165 new applications.²⁷

Public Records Exemption for the Address Confidentiality Program

In 1998, when the Legislature established the ACP,²⁸ it also enacted a public records exemption for the addresses, telephone numbers and social security numbers of ACP participants.²⁹ The Legislature provided an exception to the exemption, allowing the information to be disclosed under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.³⁰

The Legislature found that it was necessary that the information be exempted from public disclosure because “[r]elease of this information would significantly threaten the safety and security of program participants.”³¹

The Legislature also provided that the Supervisor of Elections was prohibited from including an ACP participant's name, address, or telephone number in any list of registered voters available to the public or from otherwise making such information available for copying or inspection.³²

In 2003, the public records exemption relating to the ACP was reviewed, pursuant to the Act,³³ and the public records exemption for the addresses, telephone numbers, and social security numbers of ACP participants was re-enacted with modification.³⁴ Because it was amended, the exemption was again made subject to the Act and set to repeal on October 2, 2008, unless reviewed and re-enacted by the Legislature.

In July 2003, the Florida Attorney General (the AG) issued an opinion in response to the following question:

Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?³⁵

The AG noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the Supervisor of Elections are exempt from public disclosure. The AG refused, however, to “infer” that the exemption extended to the signatures and addresses of witnesses on an absentee ballot.³⁶ The AG acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.³⁷

²⁷ Office of the Attorney General, Division of Victim Services and Criminal Justice Programs, *Annual Report 2007-2008*, available at [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6YEJPG/\\$file/2007-2008AnnualReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6YEJPG/$file/2007-2008AnnualReport.pdf) (last visited August 21, 2009).

²⁸ Chapter 98-404, L.O.F.

²⁹ Chapter 98-405, L.O.F. *See also*, s. 741.465(1), F.S.

³⁰ *Id.*

³¹ Chapter 98-405, L.O.F.

³² Chapter 98-404, L.O.F.

³³ Florida Senate, *Open Government Sunset Review of the Public Records Exemption for Address Confidentiality Program for Victims of Domestic Violence (s. 741.465, F.S.)*, Interim Project Report 2003-206 (December 2002).

³⁴ The separate statutory provision prohibiting the Office of the Attorney General from disclosing this information was repealed and replaced with the specification that the re-enacted public records exemption applied to the information held by the Office of the Attorney General. Chapter 2003-185, s. 3, L.O.F. The separate statutory provision prohibiting the Supervisor of Elections from disclosing this information was also repealed and replaced with a new subsection that explicitly provided that this information was exempt if contained in voter registration records held by the Supervisor of Elections. Chapter 2003-185, ss. 2 and 3(2), L.O.F.

³⁵ Florida Attorney General, Advisory Legal Opinion, Number AGO 2003-35 (July 31, 2003).

³⁶ *Id.*

³⁷ *Id.*

In 2005 the Legislature amended s. 741.465(2), F.S., clarifying that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in all “voting records,” held by either the Supervisor of Elections *or* by the Department of State, are exempt from public disclosure.³⁸ The legislation provided that s. 741.465, F.S., as amended, would be subject to review under the Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment.³⁹ Because the legislation specified that the statute was subject to review *as amended*, the scope of this review is limited to subsection (2), the portion of s. 741.465, F.S., that was amended in 2005.

Findings and/or Conclusions

The Act requires the Legislature to consider six questions when deciding whether to save a public records exemption from scheduled repeal.

What specific records does the exemption affect?

The exemption in s. 741.465(2), F.S., protects from public disclosure the names, addresses and telephone numbers of participants in the ACP, when that information is contained in voter registration or other voting records⁴⁰ held by the Supervisor of Elections or by the Department of State.⁴¹

Whom does the exemption uniquely affect, as opposed to the public?

The exemption affects only participants in the ACP who choose and who are otherwise qualified to participate in the elections process.

What is the identifiable public purpose or goal of the exemption?

The exemption protects information of a sensitive and personal nature. In particular, the exemption protects the new location of a victim of domestic violence who becomes an ACP participant. If there were no exemption for the voter registration and voting records of program participants, an ACP participant would be unable to exercise her fundamental right to vote, because doing so could put her in jeopardy of being found by her perpetrator.

For this report, staff surveyed domestic violence centers across the state, as well as the Office of the Attorney General, the Department of State, and the Florida State Association of Supervisors of Elections.⁴² The surveys uniformly supported reenactment of the exemption, citing danger to the victim participants if the information were made available. One responder noted,

Many victims who are enrolled in the [ACP] are those whose abusers have stalked their victim and utilized public records, and every other method available (legal as well as illegal) to continue to harass their victims [sic] and compromise her safety.⁴³

³⁸ Chapter 2005-279, s. 2, L.O.F.

³⁹ *Id.* at s. 3.

⁴⁰ “Voting record” is not defined by statute, but is understood to mean any document executed by an individual in the process of exercising his or her right to vote. Conversation with Maria Matthews, Assistant General Counsel, Florida Department of State (July 21, 2009).

⁴¹ The passage of the federal Help America Vote Act of 2002 (HAVA) (Public Law 107-252, Help America Vote Act) had a dramatic impact on nearly every aspect of election administration. One of the most significant mandates of HAVA required each state, acting through the Chief State Election Official (in Florida, the Department of State), to establish an official, uniform and nondiscriminatory statewide computerized voter registration list that is centralized and interactive. Florida enacted state legislation in 2003 (Chapter 2003-415, L.O.F.) and 2005 (Chapter 2005-277 and 2005-278, L.O.F.) to implement HAVA. See Department of State website at <http://election.dos.state.fl.us/hava/FVRS/index.shtml> (last visited July 21, 2009). As a result of this mandate, both the Supervisors of Election and the Department of State are considered custodians of voting records. Conversation with Maria Matthews, Assistant General Counsel, Florida Department of State (July 21, 2009).

⁴² Survey responses on file with the Senate Committee on Children, Families, and Elder Affairs.

⁴³ Survey response from Quigley House, Inc., on file with the Senate Committee on Children, Families, and Elder Affairs.

Survey responders also expressed concern that the repeal of the exemption would mean that victim participants in the ACP would be foreclosed from exercising their rights to vote.

Can the information be readily obtained by alternative means? If so, how?

It appears that the exempt information may only be made available if the program participant herself discloses the information.

Is the record protected by another exemption?

The exempted information is not explicitly protected by any other exemption. Section 741.406, F.S., prohibits the Supervisor of Elections from including the name, address, and telephone number of an ACP participant in any list of registered voters available to the public, but this prohibition does not extend to voter registration or other voting records.

Are there multiple exemptions for the same type of record that it would be appropriate to merge?

There do not appear to be multiple exemptions for the information protected by this exemption.

Recommendation

Senate professional staff recommends that the Legislature retain the public records exemption established in s. 741.465, F.S., which is the foundation of the Address Confidentiality Program for victims of domestic violence. Without the exemption specifically provided for in s. 741.465(2), F.S., a victim of domestic violence would be unable to protect from public disclosure the details of her new location, because that information would otherwise be subject to release in response to a public records request for voter registration and voting records. Without the exemption, an ACP participant would be faced with the untenable decision to either forego her fundamental right to participate in the election process or to jeopardize her safety. The exemption is narrowly drawn to meet the stated and compelling public necessity of protecting information, the disclosure of which might jeopardize the safety of the individuals identified. The exemption therefore meets the criteria for reenactment.