



The Florida Senate

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Committee on Health Regulation

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 383.412, F.S., CHILD ABUSE DEATH REVIEW COMMITTEES

Issue Description

Section 383.402, F.S., establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health. The committees must review the facts and circumstances of all deaths of children from birth through age 18 which occur in Florida as the result of verified child abuse or neglect.

Section 383.412, F.S., makes any information that would reveal the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by, and which information is held by, the State Child Abuse Death Review Committee or local committee, or a panel or committee assembled by the state committee confidential and exempt from the Public Records Law. All information that is confidential and exempt from public records requirements by operation of law and that is obtained by the child abuse death review committees or panels retains that confidential status and is exempt from the Public Records Law.

Section 383.412, F.S., also makes portions of meetings of the State Child Abuse Death Review Committee or local committees or panels at which confidential and exempt information is discussed exempt from the Public Meetings Law. The State Child Abuse Death Review Committee and local committees may share with each other any relevant information regarding case reviews involving child death which is made confidential and exempt under the Public Records Law.

These exemptions are set to be repealed on October 2, 2010, unless they are reviewed under the Open Government Sunset Review Act and saved from repeal through reenactment by the Legislature.

Background

Public Records and Meetings

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 1892.¹ 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.² Article I, s. 24 of the State Constitution, provides that:

- (a) 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.

¹ Section 1390, 1391 Florida Statutes. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. 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 or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Public Meetings Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply

³ Chapter 119, F.S.

⁴ 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.”

⁵ s. 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Art. I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c) of the State Constitution.

¹² Attorney General Opinion 85-62.

made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act (the Act)¹⁴ provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. 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.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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 their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that 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.¹⁵

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

The State Child Abuse Death Review Program

The Legislature authorized the Florida Child Abuse Death Review program in 1999 to conduct detailed reviews of the facts and circumstances surrounding child abuse and neglect deaths for which a verified report of abuse or neglect exists.¹⁷ The program is administered and staffed by the Department of Health (DOH). The State Child Abuse Death Review Committee consists of representatives from the DOH, Department of Legal Affairs, Department of Children and Family Services (DCF), Department of Law Enforcement, Department of Education, Florida Prosecuting Attorneys Association, and the Florida Medical Examiners Commission. In addition, the State Surgeon General must appoint the following members to the state committee: a board-certified pediatrician; a public health nurse; a mental health professional who treats children or adolescents; an employee of the DCF who supervises family services counselors and who has at least five years of experience in protective investigations; the medical director of a child protection team; a member of a child advocacy organization; a social worker who has experience in working with victims and perpetrators

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ s. 119.15, F.S.

¹⁵ s. 119.15(6)(b), F.S.

¹⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

¹⁷ s. 383.402, F.S.

of child abuse; a person trained as a paraprofessional in patient resources who is employed in a child abuse prevention program; a law enforcement officer who has at least five years of experience in children's issues; a representative of the Florida Coalition Against Domestic Violence; and a representative from a private provider of programs preventing child abuse and neglect.

The state committee must develop a system for collecting data on child abuse deaths, including a protocol for the uniform collection of data. The state committee must provide training to cooperating agencies and local child abuse death review committees on the use of the child abuse death data system. The state committee prepares an annual statistical report on the incidence and cause of death resulting from child abuse and neglect. The state committee must encourage and assist local child abuse death review committees. The state committee's duties include: developing guidelines for reviewing child abuse deaths; studying the adequacy of the laws, rules, training, and services, to determine what changes are needed to decrease the incidence of child abuse deaths and developing strategies and recruiting partners to implement these changes; educating the public on child abuse death; promoting continuing education for professionals who investigate, treat, and prevent child abuse or neglect; and recommending, when appropriate, the review of abuse or neglect. The state committee reviewed 163 infant/child deaths during 2007.¹⁸

Local child abuse death review committees are an integral part of the death review process. At the direction of the State Surgeon General, the director of each county health department, or the directors of two or more county health departments, may convene and support a county or multicounty child abuse death review committee in accordance with protocols established by the state committee. Each local committee must include a local state attorney or his or her designee, and any other members that are determined by the guidelines developed by the state committee. Local committees are multidisciplinary teams that have the primary responsibility for conducting the initial child abuse/neglect death reviews. The findings and recommendations of local child abuse death review committees are forwarded to the state committee. The local committees identify issues and concerns related to the child deaths in their community. They work on implementing prevention and public awareness relating to child deaths. One of the goals for the state committee for 2007 was establishing local child abuse death review committees statewide. By November 2007, local child abuse death review committees were established to cover the entire state. There are 24 local committees.¹⁹

The state and local multi-disciplinary committees are charged with implementing the functions and child abuse death reviews required under the federal Child Abuse and Neglect Prevention and Treatment Act (CAPTA).²⁰ Under the CAPTA, the federal government provides grants to states for child abuse and neglect prevention programs. The DCF administers the CAPTA grant funds and has indicated that during the current federal fiscal year Florida is expected to receive \$1,339,020 under the CAPTA.

The federal law (CAPTA) requires states to establish citizen panels to review child fatalities and to annually prepare a report that includes recommendations to improve child protection services. At least three citizen review panels (committees) must be designated by a state for receipt of the CAPTA funding and such panels must maintain specified confidentiality standards under federal law. The federal law prohibits the disclosure of any identifying information about any specific child protection case with respect to which the panel is provided information.²¹ The CAPTA does not authorize the meetings in which such information is discussed to be closed.²² The federal law provides that the panels may not make public other information unless authorized under state law. Florida law protects any information that would reveal the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by, and which information is held by a panel (committee).²³ Florida law also protects any information the panel obtains that is already confidential and exempt under Florida's Public Records Law.²⁴ Florida law

¹⁸ See Florida Child Abuse Death Review Annual Report, December 2008, page 1. Found at <http://www.doh.state.fl.us/Cms/FLCADR/attach/2008CADRrpt.pdf> Last visited on August 14, 2009.

¹⁹ *Ibid.*, page 115.

²⁰ See Public Law 93-247 and subsequent reauthorizations of the act.

²¹ See 42 USCA 5106a.

²² *Ibid.*

²³ See s. 383.412, F.S.

²⁴ *Ibid.*

makes portions of meetings of the panels at which confidential or exempt information is discussed exempt from the Public Meetings Law.²⁵

Findings and/or Conclusions

The Open Government Sunset Review Act requires consideration of a number of questions as part of the review process for a public records or meetings exemption. The review must address the nature of the records, the affected individuals, the public purpose for the exemption, and the availability of the records by alternative means.

What Specific Records or Meetings are Affected by the Exemption?

The specific records affected by the exemption are the records, of a child whose death is being reviewed by the state or a local committee, needed in order for the committee to carry out its duties under state and federal law. The affected records include any information that would reveal the identity of the surviving siblings, family members, or others living in the home of a deceased child contained in records held by the state committee or a local committee. The affected records include patient records in the possession of public or private providers of medical, dental, or mental health care; information or records of any state agency or political subdivision which might assist a committee in reviewing a child's death; and all information of a law enforcement agency which is not the subject of an active investigation and which pertains to the death of a child. Any records that are already confidential and exempt from the Public Records Law that the state committee or a local committee obtains during their review retains its confidential and exempt status.

Section 383.412, F.S., makes portions of meetings of child abuse death review committees at which information made confidential and exempt from the Public Records Law is discussed exempt from the Public Meetings Law.

Whom Does the Exemption Uniquely Affect?

The exemptions uniquely affect any of the surviving siblings, family members, or others living in the home of the deceased child whose death is under review by a child abuse death review committee.

What is the Identifiable Public Purpose or Goal of the Exemption?

Although legislation was introduced to reenact the public records and meeting exemptions for the Florida Child Abuse Death Review program during the 2004 Regular Legislative Session, it failed to pass. The public records and meetings exemptions for the program were repealed on October 2, 2004. In 2005, the Legislature enacted s. 383.412, F.S., exemptions from the Public Records and Meeting Law which are currently under review. During the period when public records and meeting exemptions did not exist, the chairperson of the State Child Abuse Death Review Committee found that the loss of the exemptions had significantly impeded the state committee's ability to carry out its statutory duties under CAPTA, including extensive and meaningful review of child deaths resulting from abuse.

The public records and meetings exemptions under Florida law protect the release of information that would identify the surviving siblings, family members, or others living in the home of the deceased child whose death is under review by the committee. Without the current exemptions, DOH officials state that relevant information about contributing factors that lead to a child's death may not be candidly or ethically discussed without causing undue embarrassment to surviving siblings, family members, or others living in the home of the deceased child whose death is under review by the committee.

Can the Information in the Records Be Readily Obtained by Alternative Means?

In some instances, information identifying the surviving siblings, family members, or others living in the home of the deceased child whose death is under review by the state or local committee, could be obtained by other means. The DCF's death review report, the medical examiner autopsy report, vehicular accident reports, and state criminal history reports on family members are a public record. The address of a parent or other adult living in the home of the deceased

²⁵ *Ibid.*

child may be listed in the telephone directory, local property records, public utility records, and drivers' license records. The conclusive identity of all the surviving siblings, family members, and others living in the home of the deceased child would be difficult to obtain; however, without exhaustive and comprehensive research.

Is the Record or Meeting Protected by Another Exemption?

Federal law (CAPTA) prohibits the release of identifying information received by the state and local committees when carrying out their obligations under federal law, but state law requires disclosure of any non-identifying information.²⁶ The federal law prohibits the release of identifying information but does not expressly authorize the committees to close their meetings.²⁷ The confidentiality of identifying information under both federal and state law has allowed the State Child Abuse Death Review Committee to conduct child death reviews as a citizen panel under CAPTA.

Continued Necessity for the Exemption

In the absence of the exemptions, sensitive, personal information concerning children and their relatives would be disclosed. The exemptions allow the committees that are charged with the review of child fatalities to do so with open communication and coordination among the parties. The committees maintain a spreadsheet documenting demographics of the child, including the child's name, date of birth, and any relevant information on the cause of death and circumstances surrounding the death. The review of child abuse deaths includes a variety of very sensitive information not only about the child, but about family members and surviving siblings. According to the DOH staff, many of the cases are simultaneously being prosecuted in the criminal justice system, where the perpetrator is being charged with crimes relating to the child's death. Additional exposure of the family and sibling information potentially endangers a child from a reaction by the alleged perpetrator, the child's family, friends, or social network who may threaten, intimidate, or take other action in an effort to discourage criminal prosecution. In cases that are not subject to criminal prosecution, reactions from family and others in the child's social network may lead to additional endangerment to individuals whose identifying information is made available as a part of the child abuse death reviews.

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

Senate professional staff, in its research, did not identify any exemptions for the same type of record or meeting for which it would be appropriate to consider merging exemptions.

Options and/or Recommendations

Senate professional staff has reviewed the exemptions in s. 383.412, F.S., pursuant to the Open Government Sunset Review Act, and finds that the exemptions meet the requirements for reenactment. The exemptions protect information of a sensitive personal nature and allow the child abuse death review committees to more efficiently perform their duties in candor without compromising the personal safety of individuals whose lives are discussed.

²⁶ See *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979) as cited in Florida Attorney General Opinion 2005-03 and 42 USC 5106a(c)(4)(B).

²⁷ See Fla AGO 2005-03.