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Committee on Judiciary

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 119.071(4)(D)6., F.S., PERSONAL INFORMATION RELATING TO GUARDIANS AD LITEM

Issue Description

A guardian ad litem is a volunteer appointed by the court to protect the rights and advocate for the best interests of a child involved in a court proceeding. The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. Currently, there are approximately 7,000 certified volunteers in the Guardian ad Litem Program.

Section 119.071(4)(d)6., F.S.,¹ provides that the home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem are exempt from the public-records requirements found in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution. The statute also exempts comparable information for the guardian ad litem's spouse and children. The public-records exemption is conditioned upon the guardian ad litem making a written request to an agency asking it not to disclose the information and submitting a written statement that he or she has made reasonable efforts to protect the covered information from being accessed through other means available to the public.

This public-records exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will expire October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature. This report reviews the public-records exemption relating to specified personal information of guardians ad litem in accordance with the Open Government Sunset Review Act.

Background

Florida Public-Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.² In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.³ Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act⁴ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁵ records are available for public

¹ In May 2009, the Division of Statutory Revision of the Office of Legislative Services certified to the President of the Senate and the Speaker of the House of Representatives that s. 119.071(4)(d)6., F.S., was scheduled to expire October 2, 2010, unless saved through reenactment by the Legislature. During the 2009 Regular Session, House Bill 7037 (ch. 2009-169, Laws of Fla.) reorganized s. 119.071(4)(d), F.S., providing new statutory designations for the public-records exemptions found in that statute. Effective October 1, 2009, the guardian ad litem public-records exemption will be found in sub-subparagraph h. of s. 119.071(4)(d)1., F.S. However, because this report is scheduled for release prior to the date change, it continues to reference the guardian ad litem public-records exemption as s. 119.071(4)(d)6., F.S.

² Sections 1390, 1391, F.S. (Rev. 1892).

³ FLA. CONST. art. I, s. 24.

⁴ Chapter 119, F.S.

inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, ... tapes, photographs, films, sounds recordings ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. 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. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. 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.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption’s enactment. By June 1 of each year, 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 necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served 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. An identifiable public purpose is served if 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 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; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination 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.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- What is the identifiable public purpose or goal of the exemption?

⁵ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency.

Section 119.011(2), F.S.

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

¹² *Id.*

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
- 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?¹³

Florida Guardian ad Litem Program

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children.¹⁴ A guardian ad litem is "a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding."¹⁵ The court must appoint a guardian to represent the child in any child abuse, abandonment, or neglect proceeding, whether civil or criminal.¹⁶ There are 21 local guardian ad litem programs in Florida's 20 judicial circuits.¹⁷ In 2003, the Legislature created the statewide Guardian ad Litem Office within the Justice Administrative Commission to help alleviate the perceived conflict of interest that existed because the Guardian ad Litem Program was being supervised by the circuit courts.¹⁸ The statewide Guardian ad Litem Office was created in statute to "provide a statewide infrastructure to increase functioning and standardization among the local programs" operating in the judicial circuits.¹⁹ The executive director of the statewide Guardian ad Litem Office is appointed by the Governor from a list of qualified applicants submitted by the Guardian ad Litem Qualifications Committee.²⁰ The executive director serves a three-year term, and he or she may be appointed for more than one term.²¹ As of April 2009, there were approximately 27,000 children represented by the Guardian ad Litem Program.²² Currently, there are an estimated 7,000 certified volunteers in the Guardian ad Litem Program.²³

Guardians ad litem are responsible for making independent recommendations to the court based on the best interests of a child. In order to accomplish this goal, some of the responsibilities of a guardian ad litem include:

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interests;
- Reviewing records, such as medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial reports;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan, which establishes the placement intended to serve as the child's permanent home, has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interests of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan, which serves the child's best interests; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.²⁴

¹³ Section 119.15(6)(a), F.S.

¹⁴ Florida Guardian ad Litem Program, <http://www.guardianadlitem.org/> (last visited June 24, 2009).

¹⁵ *Id.* at http://www.guardianadlitem.org/vol_faq.asp (last visited June 24, 2009).

¹⁶ Section 39.822(1), F.S.

¹⁷ Florida Guardian ad Litem Program, http://www.guardianadlitem.org/partners_c16.asp#map (last visited July 1, 2009).

¹⁸ Section 39.8296(1), F.S.; ch. 2003-53, Laws of Fla.

¹⁹ *Id.*

²⁰ Section 39.8296(2), F.S. The qualifications committee is composed of two persons appointed by the Governor, two persons appointed by the Chief Justice of the Florida Supreme Court, and one person appointed by the Statewide Guardian ad Litem Association.

²¹ *Id.*

²² Florida Guardian ad Litem Program, http://www.guardianadlitem.org/vol_faq.asp (last visited August 11, 2009).

²³ *Id.* This number is current through April 2009.

²⁴ *Id.*

Public-Records Exemption

There is precedent in the Florida Statutes for affording protection to addresses, telephone numbers, social security numbers, and other personal information relating to certain individuals, such as judges, magistrates, prosecutors, and code enforcement officers.²⁵ In 2005, the Legislature added subparagraph 6. to s. 119.071(4)(d), F.S., which is the paragraph governing public-records exemptions for agency personnel information. In doing so, the Legislature exempted home addresses, telephone numbers, places of employment, and photographs of current and former guardians ad litem.²⁶ It also exempted the names, home addresses, telephone numbers, and places of employment of the spouses and children of current or former guardians ad litem.²⁷ As a result of legislation adopted in 2009, the designation for this public-records exemption will change to s. 119.071(4)(d)1.h., F.S., effective October 1, 2009.²⁸ The exemption defines a guardian ad litem pursuant to s. 39.820, F.S., which provides that a guardian ad litem includes:

a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

In order to obtain the public-records exemption, the guardian ad litem, or the guardian's employing agency, must submit a written request to the custodial agency of the records requesting maintenance of the personal information covered by the exemption. Also, the public-records exemption is conditioned upon the guardian ad litem submitting a written statement that he or she has made reasonable efforts to protect the covered information from being accessed through other means available to the public.

A public-records exemption must serve an identifiable public purpose and may be no broader than necessary to meet the public purpose it serves. The statement of public necessity offered by the Legislature when it created the public-records exemption under review provided, in part, that guardians ad litem:

provide a valuable service to the community. They interact with victims of child abuse and neglect and, at times, the perpetrators of that abuse or neglect. The capacity in which they work or volunteer their time does not always create good will. Different persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem. The testimony of guardians ad litem could create a safety risk. Thus, the guardians ad litem, or the spouses and children of guardians ad litem, could become a potential target for acts of revenge. If the information specified in this act remains available, the safety and welfare of guardians ad litem, and their spouses and children, could be seriously jeopardized. Accordingly, it is a public necessity that identifying and location information of guardians ad litem, and their spouses and children, be made exempt from public disclosure.²⁹

This public-records exemption will expire October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

²⁵ See s. 119.071(4)(d), F.S.

²⁶ Chapter 2005-213, Laws of Fla.

²⁷ *Id.*

²⁸ See note 1 for more details.

²⁹ Chapter 2005-213, Laws of Fla.

Findings and/or Conclusions

Administration of Exemption

The public-records exemption that is at issue under this Open Government Sunset Review exempts from public disclosure specified personal information relating to current or former guardians ad litem including:

- Their home addresses, telephone numbers, places of employment, and photographs; and
- The names, home addresses, telephone numbers, and places of employment of their spouses and children.

An agency may have this type of personal information on file for a guardian ad litem if the guardian is an employee of the agency or through some other nexus, such as reports generated by the guardian through his or her service with the Guardian ad Litem Program.

As noted in the Background section of this report, the exemption for guardians ad litem is one of many in place that maintain the confidentiality of personal information for certain individuals, such as judges, prosecutors, and code enforcement officers. In order to obtain an exemption for this information, either the covered individual or the individual's employing agency must make a request for maintenance of the exemption to the custodial agency.³⁰ Some state agencies have forms online or available upon request that allow guardians and other authorized persons listed under s. 119.071(4)(d), F.S., to request the exemption. For example, the Department of Highway Safety and Motor Vehicles (DHSMV) requires a form, as well as documentation on employer letterhead indicating eligibility, asking that driver's license information not be released under the exemptions found in s. 119.071(4)(d), F.S.³¹ The Department of Children and Families (DCF) has a process where new employees can fill out a form to either request protection of their personal information from disclosure or to waive entitlement to it. The form provides a summary of s. 119.071(4)(d), F.S., and requires the individual to specify under which criterion he or she is entitled to the exemption of personal information.³² Similarly, the Florida Guardian ad Litem Program provides a form for its new volunteers to complete during their training which satisfies the request for maintenance of the personal information.³³ The form provides an explanation of the type of information that the Guardian ad Litem Program collects from its volunteers and it also highlights that a guardian must make reasonable efforts to protect his or her personal identifying information in order for the Guardian ad Litem Program to keep it exempt from public disclosure. The form also provides examples of how a guardian can protect his or her personal information, such as keeping an unlisted telephone number and filing requests with the local voter registration office and clerk of court's office for maintenance of exempt status of the personal information.

The Internet and other information technologies have revolutionized the gathering and sharing of personal information. Therefore, it is possible that even if one agency, upon request, keeps certain information exempt, the same information may be accessible through other sources readily available to the general public. In an apparent attempt to address this issue, s. 119.071(4)(d)6., F.S., requires a guardian ad litem to also provide to an agency holding his or her personal information a written statement that the guardian has made reasonable efforts to protect the same information from being accessible through other means available to the public. However, the statute does not specify what is meant by "reasonable efforts" or "other means available to the public." The statute does not specify whether the requirement focuses on private-sector sources of information that the public can access (e.g., phonebook listings or personal or network websites) or whether it focuses on records maintained by other governmental agencies.

³⁰ Section 119.071(4)(d)8., F.S. (redesignated as s. 119.071(4)(d)2., F.S., effective October 1, 2009).

³¹ Interview with Steven Fielder, Office of Legislative Affairs, Dep't of Highway Safety and Motor Vehicles (July 14, 2009). The department has an online form titled "Department of Highway Safety and Motor Vehicles Request to Withhold Personal Information"; however, this form is used only to reseat information that a person once said was permissible to release. The form required to keep personal information confidential under s. 119.071(4)(d), F.S., must be specifically requested by the person wishing to take advantage of the exemption.

³² Interview with John Jackson, Assistant General Counsel, Dep't of Children and Families (July 20, 2009).

³³ Interview with Deborah Lacombe, Deputy General Counsel, Florida Guardian ad Litem Program (July 14, 2009).

Research conducted by Senate professional staff suggests uncertainty surrounding this “reasonable efforts” provision. The Florida Guardian ad Litem Program expressed confusion on how to explain to guardians what the statute requires of them.³⁴ In a questionnaire sent by professional staff of the Committee on Judiciary as part of the review, 37 out of 92 current guardians responded that they believed the information covered by this public-records exemption was readily obtainable through other means. Examples that were given were basic Internet searches such as Google and Yahoo People, the property appraiser website, and the tax collector website. The fact that a number of guardians believe the information is readily attainable may be indicative of perceived or actual challenges in complying with the requirement to take reasonable efforts to keep the covered personal information from being accessed by the public. Of the comparable exemptions found in s. 119.071(4)(d), F.S., currently only one other includes the requirement that the covered persons make reasonable efforts to protect the exempt information from being accessible through other means.³⁵ If it wishes to keep the “reasonable efforts” requirement, the Legislature may wish to clarify the provision and evaluate the extent to which it should apply to comparable exemptions for individuals beyond guardians ad litem.

Public Purpose of Exemption

A guardian ad litem must be appointed in any child abuse, abandonment, or neglect proceeding to advocate for the best interests of the child. The guardian ad litem and the parent may have contrary opinions on what is in the child’s best interests. When it created subparagraph 6. of s. 119.071(4)(d), F.S., the Legislature found that guardians ad litem often interact with victims of child abuse, as well as the perpetrators of the abuse, and that the testimony of guardians ad litem could create a safety risk because some persons may be disgruntled by the recommendations made by the guardian. Under the Open Government Sunset Review Act, a public-records exemption must serve an identifiable public purpose in order to be maintained. The guardian ad litem exemption appears to serve two public purposes.

In order to gauge how this exemption functions and its importance, professional staff of the Committee on Judiciary sent questionnaires to current and former guardians ad litem, as well as staff members of the Florida Guardian ad Litem Program. Responses from the questionnaire indicated that there is a potential for danger to a guardian. Twenty-nine out of 121 participants answered “yes” to the question “have you or your spouse or children ever been the subject of a threat based on your services as a guardian ad litem?” Many of the descriptions of the threats referred generally to verbal threats made by disgruntled parents. One guardian said that she was threatened by a person affiliated with a gang while being a guardian on a case, and she asked to be removed from the case. Another guardian described a time when all parties associated with the case she was on were asked to leave town for the weekend because the father of the child threatened to “blow us all up.” Questionnaire responses indicated that more people than not feel that there is a likelihood that a guardian ad litem will be exposed to potential personal safety risks from a person involved in the legal proceeding. One participant said that “anyone perceived as being involved or affiliated with agencies intervening in cases where children are abused or neglected, are [sic] at risk of being targeted by violent acts of retribution.” Another respondent stated:

As GALs we volunteer our time because we feel strongly about the need for children to have a voice in court proceedings. We really have no control who [sic] we come in contact with when working our cases. Some are not mentally stable, some are convicts, some are pedophiles, some are domestic violence offenders, etc. We do not want to make it easy for these people to get “revenge” because they didn’t like the outcome of the court proceedings.

The potential personal safety risks related to service as a guardian expressed by questionnaire respondents is also echoed by some guardian ad litem program administrators from other states. An informal Internet search, for example, found that the North Carolina court system apprises its guardians of the ability to take a law

³⁴ *Id.*

³⁵ See s. 119.071(4)(d)1.b., F.S. (redesignated as s. 119.071(4)(d)1.e., F.S., effective October 1, 2009) (relating to specified personal information for general magistrates, special magistrates, judges of compensation claims, administrative law judges, and child support enforcement hearing officers, as well as their spouses and children). During the 2009 Regular Session, the Legislature passed HB 7037 (CS/SB 1342), which requires a federal attorney, judge, or magistrate to provide a written statement that reasonable efforts have been made to protect his or her personal information from disclosure through other means. Chapter 2009-169, Laws of Fla. This law will take effect October 1, 2009.

enforcement officer with him or her on home visits if the guardian is uncomfortable with a particular situation.³⁶ Guidelines for guardians ad litem practicing in Cuyahoga County, Ohio, noted that guardians may receive threats, but that the guardian must not be unduly influenced by them.³⁷ Thus, based on the questionnaire responses and other research, this public-records exemption appears to serve a public purpose by maintaining the safety of the guardian and the guardian's family by protecting their personal information.

In addition, the exemption appears critical to the maintenance of the Guardian ad Litem Program. The majority of respondents to the questionnaire sent by Senate professional staff indicated that they were not aware of any other Florida law that governs or protects the information covered by the guardian ad litem exemption. Accordingly, some respondents said that they would terminate their participation in the Guardian ad Litem Program without the exemption, while others responded that it may be more difficult to recruit and retain guardians if the Legislature does not save the law from repeal. For example, one respondent said that the law:

safeguards the government's role in posing a danger of potential harm and harassment to employees and volunteers who are offering their time and talents as a service to Florida's children and elderly population. Without such protection, individuals may be less willing to volunteer, thus reducing the pool of resources and escalating the already exaggerated need to represent the needs and interests of an underrepresented demographic. It is an injustice to allow the needs of a child to remain unmet [sic] because the government refuses to protect the personal information of the would-be guardian.

Based on research done by Senate professional staff, it appears that this public-records exemption not only helps maintain the safety of the guardian ad litem, but it is also necessary to effectively administer the Florida Guardian ad Litem Program. As noted previously in this report, two of the statutorily recognized grounds for maintaining a public-records exemption are preventing the release of personal information which could jeopardize an individual's safety and ensuring the effective and efficient administration of a governmental program.

Although research shows that this exemption satisfies the Open Government Sunset Review requirements, comparison to similar exemptions identifies a potential area for revision. The public-records exemption under review exempts the places of employment for the children of a current or former guardian ad litem; however, the names and locations of schools and day care facilities attended by a guardian ad litem's children are not covered. Comparable exemptions for specified agency investigators, magistrates, human resource directors, United States judicial officers, code enforcement officers, and juvenile probation officers all include the names and locations of schools and day care facilities as personal information exempt from disclosure.³⁸ The same policy underpinnings apply for all of these exemptions: to protect the listed groups of individuals and their families from potential harm that could occur due to the nature of their jobs. The Legislature may wish to add similar language to the public-records exemption under review for guardians ad litem to create uniformity within the statute. Staff from the statewide Guardian ad Litem Program stated that it was important to include the names and locations of schools and day care facilities in the statute because this information could be obtained from a guardian's employment file, since many guardians are state employees who participate in the dependent day care reimbursement program.

Options and/or Recommendations

Senate professional staff recommends that the Legislature reenact the public-records exemption established in subparagraph 6. of s. 119.071(4)(d), F.S., which makes specified personal information relating to current or former guardians ad litem exempt from disclosure. This recommendation is made in light of the information gathered for this Open Government Sunset Review which indicates that there is a public necessity to continue to protect guardians ad litem from potential threats, as well as to facilitate the recruitment and retention of guardians

³⁶ The North Carolina Court System, Guardian ad Litem, Frequently Asked Questions, <http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=12&language=1#234> (last visited August 24, 2009).

³⁷ *Guidelines for Guardians ad Litem Practicing in the Court of Common Pleas for Cuyahoga County – Juvenile Division*, Guardian ad Litem Project, available at <http://www.galproject.org/Resources/Documents/default.aspx> (last visited August 24, 2009).

³⁸ See ss. 119.071(4)(d)1.-7., F.S. (redesignated as ss. 119.071(4)(d)1.a.-i. and (5)(i), F.S., effective October 1, 2009).

for the effective administration of the Florida Guardian ad Litem Program. In order to conform to comparable exemptions within the statute, Senate professional staff recommends that the Legislature consider amending this section to include the names and locations of schools and day care facilities attended by a guardian ad litem's children within the protected information.