

Florida Department of Law Enforcement



Recommendations to the Commission on Open Government Reform

February 13, 2008

Executive Order 07-107, created the Commission on Open Government Reform to review, evaluate, and issue recommendations regarding Florida's public records and public meetings. As part of the review process, the Florida Department of Law Enforcement (FDLE) was asked to formally provide input to Commission at the February 12-13, 2008 meeting.

FDLE Assistant Commissioner Mark Zadra will present the following three recommendations to improve Florida's laws regarding public records:

- Create a limited exception to the general prohibitions against publication of photos of sexual assault victims and autopsy photographs;
- Modernize the current exemption for "non-Florida" information to promote the sharing of information from non-Florida agencies and private entities with Florida public agencies;
- Create an exemption for information submitted to FDLE and DBPR with regard to slot machine operations at the pari-mutuels; and
- Create an exemption for specific personal information submitted to FDLE for purposes of subscribing to email notifications regarding the location of registered sex offenders.

Recommendation 1: Create a limited exception to the general prohibitions against publication of photos of sexual assault victims and autopsy photographs

Current Situation. Florida law prohibits publishing photographs or other information related to victims of sexual offenses and autopsies. Information identifying a sexual assault victim and information related to autopsies are exempt from public disclosure in Florida. There are no exceptions for investigative or training purposes.

To protect the privacy of sexual assault victims, Florida has enacted provisions exempting information that would identify the victim from the public records laws and has specifically prohibited the intentional publication of such information. After the crash death of Dale Earnhardt, a prolonged legal battle occurred regarding access under the public records law to the autopsy photos. The 2001 Legislature passed a bill prohibiting publication of autopsy photos without the express permission from next-of-kin (Earnhardt Family Protection Act). Violation of the protections imposed by the Act is a third degree felony.

Challenges. In practice, by limiting the publishing of information these prohibitions deny law enforcement's ability to locate missing, but endangered victims of a sexual offense or to identify a "Jane or John Doe" corpse. In training venues, instructors cannot use autopsy photos to train crime scene investigators and show them "what to look for" on bodies. Florida medical examiners cannot use "John or Jane Doe" photos at meetings with other examiners or to otherwise assist them in their duties. The statutory restrictions, though well intended, are having unintended negative consequences.

Occasionally a sexual assault victim or one believed to be a sexual assault victim may be missing and endangered. For example, a young female was recently the subject of a national search after a videotape showed her being sexually assaulted. The nature of only available images on the tape meant the photos available for "Missing – Endangered" posters clearly suggested the young girl was a sexual assault victim. An out-of-state agency circulated posters with a still photograph from the video, asking for law enforcement assistance. Florida's prohibition against identifying someone as a sexual assault victim limited Florida law enforcement's ability help locate the child using the photograph as provided.

Regarding autopsies, many unidentified bodies are located. As a result, next-of-kin is not available to approve publication of autopsy information. Unless a photo of the person or perhaps unique identifiers such as tattoos can be used, attempts to identify the body are severely hamstrung. In addition, professionals, including crime scene investigators in training cannot use autopsy photos that could help those trainees learn what to look for at a crime scene. Even medical examiners cannot share photos with other medical examiners in an effort to hone their skills.

Proposed Solution. Revise pertinent statutory provisions (Sections 119.071, 406.135, and 406.145, Florida Statutes) to allow limited but justifiable disclosure of the information for legitimate investigative, training, or medical examiner purposes. FDLE

believes the privacy interests sought to be protected by current law may still be maintained, but that there are times when the unintended consequences of these well-intended restrictions could be avoided by enacting the proposed changes.

Recommendation 2: Modernize the current exemption for “non-Florida” information to promote the sharing of information from non-Florida agencies and private entities with Florida public agencies

Current Situation. The public records exemption in Section 119.071(2)(b), Florida Statutes, allows Florida criminal justice agencies to receive criminal intelligence information or criminal investigative information from non-Florida criminal justice agencies and to maintain that information’s confidential or similarly restricted disclosure basis. The policy behind the exemption is that Florida should not exact a “public records toll” upon a criminal justice agency outside of Florida for sharing criminal intelligence and criminal investigative information with a Florida agency. What is not public in the hands of the custodian of information should not become public simply because it is shared with a Florida agency.

If the exemption did not exist, information could become a public record upon a Florida agency receiving the non-Florida information. The intent of the provision is to allow non-public information at its non-Florida source, to remain non-public if it is shared with a Florida criminal justice agency. To the extent the exemption is applied to criminal intelligence or investigative information provided by a non-Florida criminal justice agency, the exemption functions well. However, not all sensitive and non-public information constitutes “active criminal intelligence” or “active criminal investigative information” as those concepts are applied under Florida’s public records law.

Challenges. In the days after the terror attacks of September 11, 2001, government entities began sharing important and confidential information in an effort to better anticipate and address potential terror threats. That effort transcends criminal justice agencies. For example, as Florida’s chief domestic security coordinating agency, FDLE receives information from health authorities, fire/rescue authorities, private sector information sources, and other non-criminal justice agencies directly related to its mission to protect Florida from terrorism. At the same time, FDLE works directly with many Florida agencies that are not “criminal justice agencies.” The information contributed by these entities often will not be “active criminal intelligence” or “active criminal investigative” information, but nevertheless is sensitive and not public in the hands of the originator of the information.

For many non-Florida agencies, the information they possess is not a public record in their home jurisdiction. These agencies will not share written materials with FDLE and other Florida agencies for fear it becoming public record once a Florida agency receives it. This fear hampers agencies’ abilities to obtain this information. There is no public records exemption that operates to exempt information contributed by non-Florida agencies. The current limitation on the “non-Florida” exemption has a chilling effect on the sharing of information important to Florida’s domestic security efforts.

Proposed Solution. The exemption that protects information provided to Florida from non-Florida sources needs to be expanded as its current language is too restrictive in practice. The revision of Section 119.071, Florida Statutes, eliminating restrictions to “criminal justice agencies” and “criminal intelligence” or “criminal investigative” information would promote the sharing of vital and important domestic security information.

Expanding the scope of the exemption will allow the information to retain its original status enjoyed at its source upon it being shared with a Florida agency. Given the reality that domestic security efforts transcend criminal justice agencies, the proposal would allow non-public information from non-Florida agencies and other non-Florida entities to be shared with Florida agencies without forcing the information to become public by reason of such sharing. FDLE believes Florida should not exact a “public disclosure” toll upon non-Florida entities when they want to share non-public information with Florida agencies.

Recommendation 3: Create an exemption for information submitted to FDLE and DBPR with regard to slot machine operations at the pari-mutuels

Current Situation. FDLE is dealing with an inefficient handling of private sector information necessary to perform its investigative function related to the state-licensed slot facilities at the pari-mutuel locations in Broward County (the Department of Business and Professional Regulation (DBPR) encounters similar problems with regard to their slot facility licensing efforts). There is no current public records exemption for private-sector information revealed to FDLE (or DBPR) investigators as part of their background screening responsibilities. Those in the private sector are willing to share the information, but do not want it to become public record by reason of FDLE (or DBPR) copying the information and including it in state files.

With the approval of slot machines for pari-mutuel facilities in Broward (racinos), DBPR was charged with regulatory responsibilities and FDLE was charged with criminal investigative responsibilities. To perform background reviews of potential racino employees, both DBPR and FDLE regularly access private racino information regarding the suitability of the proposed person for employment and/or state licensing. With the approval by Miami-Dade County of the expansion of slot machines to its three pari-mutuels, the same effort will be required as slot machines are added to those facilities.

The information FDLE and DPBR reviews includes financial data, details of licensing and regulatory efforts in others states, and other-state-employer job actions or state regulatory actions related to the individual. In most other states allowing slot machines, such information is not a public record. In the hands of private entities such as the companies running and operating the racinos in Florida, the information is not a public record.

Challenges. While the racino entities allow DBPR and FDLE investigators access to information, they refuse to allow any copying of information and do not allow FDLE or DBPR to otherwise “compile” copies of the information because they do not want it to become a public record. The private entities recognize that if copies are provided to either DBPR or FDLE, the information will become a public record by operation of Florida law.

The information is important to resolving background inquiries. As a result, DBPR and FDLE investigators have to travel to racino offices and view the information at the private office, without copying it for subsequent referral or use. Often, it results in numerous return trips to review the information when new issues or questions arise. Florida has a vested interest to ensure corruption-free operation of the racinos. Adequately evaluating those persons seeking licensure or employment in top positions at the racino facilities is essential to that effort. Unfortunately, the current process is not efficient and does not allow easy access to information by investigators.

Proposed Solution. Enact a new public records exemption to allow DBPR and FDLE to accept copies of materials from private entities and other states and honor any restrictions imposed by the provider about public disclosure.

Recommendation 4: Create an exemption for specific personal information submitted to FDLE for purposes of subscribing to email notifications regarding the location of registered sex offenders.

Current Situation. Last year, Section 943.44353, Florida Statutes, required Florida provide a sexual predator/offender email subscription service to citizens (consistent with federal Adam Walsh Act). This service allows citizens to receive an email if a sex offender moved within a prescribed radius of a selected address. It also allows subscribers to track an offender’s movements, a service that is particularly important to victims, former spouses, complainants, etc. To subscribe to the registered sexual offender/predator service, citizens provide personal information, including email addresses. FDLE plans to roll out this service very soon.

Challenges. Currently there are no exemptions regarding this information. The citizens signing up to protect themselves may be unaware their information will become public, or if they are aware that information submitted will be public, they may be fearful it could be made public. For example, a person making a public records request of this information would see an individual’s email address, which in many cases, includes information to determine a person’s identity such as last name. That person may be able to use that information to determine where someone lives and where the person’s go to school. Additionally, a sex offender requesting this information would have personal information of crime victims who signed up to track the offender who perpetrated the crime.

In addition, a simple “Google” or similar Internet search inquiry of an address can also sometimes lead to a name and other identifying information which can be easily tracked to an individual. Many emails utilize one’s last name (e.g., JDoe@yahoo.com). Even a phonebook search could potentially reveal J. Doe’s residential address to a sexual predator intent on indentifying who is accessing information related to him. The exposure of personal information to the public as a “cost of doing business with the state” could have a chilling effect on the program and could deter folks from signing up for the very service that was intended to help them protect Florida citizens.

Proposed Solution. Create a public records exemption for personal subscriber information to email notifications and alerts. An exemption to information in the sexual predator/offender system is critical because it links the email to a series of personal addresses. The Commission may also consider extending this exemption to other email subscription services offered by the state. Florida should not exact a “public records toll” upon those trying to protect themselves by forcing personal information into the public realm as the “cost of doing business” with the state.