

PUBLIC RECORDS & MEETINGS

Public Records & Meetings: Copyrights

Microdecisions, Inc. v. Skinner,
889 So. 2d 871 (Fla. 2d Dist. App. 2004)

A copyright claim asserted by a Florida government agency or official for works created in the course of official duty is invalid unless the Florida Legislature has created a statutory provision authorizing the copyright protection.

FACTS AND PROCEDURAL HISTORY

Microdecisions, Inc., a data-compilation company, filed a petition for a writ of mandamus and declaratory judgment in the circuit court after the Collier County Property Appraiser (Appraiser) refused to provide Microdecisions with copies of Geographic Information Systems (GIS) maps that the Appraiser created in the course of his public duties. Because the company intended to use the maps in its real estate business, the Appraiser sought to bind the company in a licensing agreement that would have required the company to pay royalties for the commercial use of the maps. The Appraiser claimed that the maps were protected by federal copyright law, and the trial court granted the Appraiser's motion for summary judgment. Microdecisions appealed.

ANALYSIS

Florida's Constitution and statutes guarantee access to public records unless those records have specifically been exempted. Fla. Const. art. 1, § 24(c); Fla. Stat. § 119.01 (2002). The custodian of a public record is required to provide copies to anyone requesting them, as long as the requisite fee for reproduction has been paid. Fla. Stat. § 119.07(1)(a) (2002). Some public records may be exempted from the unlimited access provided by the Florida public records law, *Bevan v. Wanicka*, 505 So. 2d 1116, 1118 (Fla. 2d Dist. App. 1987), and works produced by Florida governmental agencies and officials may be copyrighted in statutorily authorized circumstances, thereby creating a limited public records exemption. Fla. Stat. § 119.084 (2002). Before a statutory exemption authorizing state agencies to copyright their work product may be

established, the Florida Legislature must define the public necessity for the exemption and expressly craft the exemption to the necessity. Fla. Const. art. I, § 24(c).

Because the Legislature had mandated no statutory exemption, the Second District Court of Appeal rejected the Appraiser's argument that he could copyright the work. The Appraiser claimed that he could claim the copyright because no Florida statute specifically prohibited him from doing so. But the court explained that while a private party would be the presumptive holder of the rights under federal copyright law, Florida's public records law clearly trumps a governmental agency's right to copyright public records unless the Legislature has authorized a copyright exemption.

The Second District reversed the circuit court and remanded the case with instructions that summary judgment be entered in favor of *Microdecisions*. The court held that, absent a statutory provision to the contrary, such public records are not copyrightable and must be made available to the public no matter the intended use, as long as the person or entity requesting the records remits the cost of reproduction.

SIGNIFICANCE

Microdecisions assists in shaping the contours of Florida public records law. Any exception to the law for copyright purposes must be specifically authorized by the Legislature, and exceptions are permissible only if there is a specifically defined public necessity.

RESEARCH REFERENCE

- 44 Fla. Jur. 2d *Records and Recording Acts* § 40 (Westlaw database updated Jan. 2006).

Jay Daigneault

Public Records & Meetings: Exemptions

Critical Intervention Services v. City of Clearwater, 908 So. 2d 1195 (Fla. 2d Dist. App. 2005)

Documents related to security systems that contain identifying information that would enable the public to discern the presence of a security system are exempted from the requirements for public disclosure under Florida's public records law.

FACTS AND PROCEDURAL HISTORY

In 2004, Critical Intervention Services (CIS), a security services provider, submitted two separate public records requests to the City of Clearwater. CIS first asked the City to provide it with the number of business and residential alarm permits issued by the City and the number of citations and warnings issued in 2003 pursuant to the City's false alarm ordinance. The City complied with this request without objection. CIS also requested that the City provide the names of individuals and businesses who had applied for security alarm permits, who had been cited or warned under the false alarm ordinance, or who had appeared in an officer's false alarm dispatch report. Additionally, CIS asked for documents disclosing the amounts of fines and service charges levied under the false alarm ordinance. While the City produced the information concerning fines and service charges, the City rejected CIS's request for public records containing the identities or addresses of entities or individuals. CIS filed suit to compel the City to divulge this information.

The trial court granted the City's motion to dismiss CIS's claim and petition for a writ of mandamus. CIS appealed.

ANALYSIS

In affirming the trial court's decision, the Second District Court of Appeal focused on the plain meaning of the language contained in Sections 119.071 and 281.301 of the Florida Statutes. The Second District stated that the Florida Legislature created the statutory exemptions included in Sections 119.071 and 281.301 in reaction to overriding concerns for public safety, especially the prevention of terrorist attacks.

Relying heavily on Florida Attorney General Opinion 04-28, the court explained that Section 281.301's provision that "all records . . . that would reveal [security] systems or information are confidential" included any public records that would allow the public to discern which homes or businesses had security systems and which did not. The court construed the term "all records" in Section 281.301 as meaning every document, without limitation, that would divulge the presence of a security system. This language is further reinforced in Section 119.071 of the Florida Statutes. The court determined that the plain language of both Sections 119.071 and 281.301 clearly exempted documents related to security systems. Because disclosure of the names and addresses of individuals or business that obtained alarm permits, were cited or warned for false alarm violations, or were listed in police dispatch reports for false alarms would alert the public to the presence of a security system, the release of that information was prohibited.

SIGNIFICANCE

Critical Intervention Services clarifies what types of documents are excluded from the requirement of public disclosure under existing public records exemptions related to security systems. This decision confirms that government documents containing any information that could enable the public to infer whether a security system is present are exempted from public disclosure.

RESEARCH REFERENCE

- 2 Fla. Jur. 2d *Administrative Law* § 61 (2006).

Philip McCormick

Public Records & Meetings: Exemptions

Timoney v. City of Miami Civilian Investigative Panel,
917 So. 2d 885 (Fla. 3d Dist. App. 2005)

Emergency response operational plans developed by police departments are exempt from public access under Section 119.07(6)(d) of the Florida Statutes. This exemption applies even

after the emergency event has ended if the plan may be used in future emergencies.

FACTS AND PROCEDURAL HISTORY

The City of Miami Police Department developed an operational plan in response to reports of anticipated violence associated with the Free Trade Area of the Americas' (FTAA) Summit in November 2003. After the FTAA Summit ended, the City of Miami Civilian Investigative Panel (Panel) sought a judicial order to direct John Timoney, the Chief of Miami Police, to provide copies of the operational plan to the Panel. The trial court granted the order, accepting the Panel's argument that Section 119.01(1) required public access to all governmental records. Timoney appealed.

ANALYSIS

The Third District Court of Appeal, in reversing the trial court's order, stated that while Section 119.01(1) does provide for open access to public records, the lower court should have taken the inquiry further. As a general rule, all governmental documents are to be made available for public inspection and copying. Fla. Stat. § 119.01(1) (2004). However, Article I, Section 24 of the Florida Constitution provides for exemptions to the public access requirement for certain documents. One such exemption involves comprehensive police plans compiled by a criminal justice agency intended to assist in emergency responses. Fla. Stat. § 119.07(6)(d).

The Third District held that although the FTAA Summit had ended, and the specific emergency referenced in those documents was no longer imminent, the information in the plan could be applied to other security emergencies. The court noted that even though no present emergency existed, the Legislature likely intended to keep this type of information exempt after an emergency passes because the procedures and resources contained therein will be used for future events. Because the operational plan fell within the Section 119.07(6)(d) exemption, the Third District reversed the lower court's order and sealed the operational plan.

SIGNIFICANCE

Timoney demonstrates that Section 119.07(6)(d) exemptions could apply to emergency response operational plans long after the emergency has passed because these plans would likely be used in future emergencies. Public records custodians should identify information that might be applicable during a future emergency in order to ascertain which documents are protected by the Section 119.07(6)(d) exemption after the emergency that caused the document's creation has passed.

RESEARCH REFERENCE

- 44 Fla. Jur. 2d *Records and Recording Acts* § 92 (2005).

Roxanne Fixsen