

COMMUNICATIONS PRIVACY

Communications Privacy: Recording 911 Calls

Brillinger v. City of Lake Worth,
978 So. 2d 265 (Fla. 4th Dist. App. 2008)

A city 911 call center that implements a recording system under a good faith belief that it is complying with Florida's Emergency Telephone Act may be immune from liability for violations under the Florida Communications Act.

FACTS AND PROCEDURAL HISTORY

The City of Lake Worth's Police Department (City) indiscriminately recorded all incoming and outgoing calls from its 911 Call Center (Center). The Center was equipped with emergency phone lines; published, non-emergency phone lines; and unpublished, non-emergency phone lines. For roughly two years, the Center both received and made phone calls from the unpublished, non-emergency phone lines under the assumption that these calls were not being recorded. It was not until 2002 that the City began notifying Ralph Brillinger (Brillinger) and other callers that these unpublished, non-emergency lines were being intercepted and recorded. After finding out that the City was intercepting these personal calls, Brillinger filed a class action suit under the Florida Security of Communications Act.

The trial court dismissed Brillinger's complaint; however, Brillinger filed an amended complaint and a motion for summary judgment. The City countered, filing its own motion for summary judgment. The trial court granted summary judgment to the City, holding that the City's recording system was reasonable and in compliance with Florida law. Brillinger appealed to the Fourth District Court of Appeal.

ANALYSIS

The Florida Communications Act prohibits the interception of communications unless the interception falls within one of two statutory exceptions. First, communications may be intercepted where a law enforcement officer is a party to the call or where a party to the call has given prior consent to being monitored. Sec-

ond, *incoming* calls to designated 911 phone lines and to published, non-emergency phones lines, and *outgoing* 911 callbacks may be intercepted. The City argued that the Florida Emergency Telephone Act permitted it to record *all* incoming and outgoing calls from the Center. The Florida Emergency Telephone Act authorized the State Technology Office to establish regulations to govern emergency-call systems. The regulations require emergency-call centers to be equipped with at least eight minutes of instant-playback capacity for incoming emergency calls. The City argued that it could not discern whether an incoming call was emergency or personal—thus, it recorded all incoming calls to the Center.

However, the district court disagreed—even under the exceptions to the Florida Communications Act, it is impermissible to record *all* calls indiscriminately. The court explained that although the Florida Emergency Telephone Act does not provide an exception to the Florida Communications Act, the City was nevertheless insulated from liability because the City acted upon a good faith belief that its effort to comply with the Florida Emergency Telephone Act was not a violation of the Florida Communications Act. The City’s recording system was intended to comply with the State Technology Office’s requirement that emergency-call centers be equipped with instant-playback technology. The court concluded that even though the City’s recording system was a violation of the Florida Communications Act, “the City had a ‘good faith belief’ that the manner in which the . . . system was installed in [its 911 call center] was legal.” *Brillinger*, 978 So. 2d at 268.

SIGNIFICANCE

In *Brillinger*, the court established a third basis for avoiding liability under the Florida Communications Act. The City’s good faith belief that it was in compliance with multiple statutes relating to its 911 call center’s recording methods effectively abated the Center’s violation. This decision will, most likely, be applicable only to law enforcement departments whose public duties bleed into the Florida Communications Act’s domain.

The court was careful not to label its decision as expressly creating a third “exception” to the Florida Communications Act, most likely because two exceptions are expressly articulated in

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Section 934.03. Instead, the court focused on the City's belief that its system's compliance with the Florida Emergency Telephone Act would not be a violation of the Florida Communications Act. Accordingly, police departments, acting under a good faith belief that they are operating within the parameters of the Florida Communications Act may ultimately be insulated from liability for violations of the Act.

RESEARCH REFERENCE

- 16 Fla. Jur. 2d *Criminal Law* § 4092 (2005 & Supp. 2009).

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