

2-D-16 | REDACTION OF CONFIDENTIAL OR EXEMPT INFORMATION

If the custodian asserts that an exemption applies to part of the record, the custodian "shall redact that portion... and shall produce the remainder of such record for inspection and copying." Section 119.07(1)(d), F.S. *Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact information identifying confidential informant from police report but must produce the rest for inspection); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995) (police department authorized to withhold statutorily exempt criminal investigative information but must allow inspection of nonexempt portions of the records); and AGO 95-42 (statute providing for confidentiality of certain audit information did not make the entire report confidential and exempt from disclosure; the portions of the report which do not contain exempt information must be released).

The fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act. AGO 99-52. See also AGO 02-73 (agency must redact confidential and exempt information and release the remainder of the record; agency not authorized to release records containing confidential information, albeit anonymously). Compare *Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (trial court order mandating that agency produce a large number of public records within 48 hours "effectively requires AHCA to ignore its statutory duty to redact exempted information"); and *Department of Health v. Rehabilitation Center at Hollywood Hills* 259 So. 3d 979, 982 (Fla. 1st DCA 2018), reversing a lower court order that ordered production of death certificates without addressing the Department's "statutory duty to safeguard confidential and exempt information contained in the requested certificates."

A custodian of records containing both exempt and nonexempt material may comply with s. 119.07(1)(d), F.S., by any reasonable method which maintains and does not destroy the exempted portion while allowing public inspection of the nonexempt portion. AGO 84-81. And see AGOs 97-67 and 05-37 (Official Records).

Section 119.011(13), F.S., defines the term "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential



information.” See AGO 02-69 (statute providing for redaction of certain information in court records available for public inspection does not authorize clerk of court to permanently remove or obliterate such information from the original court records).

Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), F.S. See *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) (agency’s response that it had provided all records “with the exception of certain information relating to the victim” deemed inadequate because the response “failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption”); and *Langlois v. City of Deerfield Beach, Florida*, 370 F. Supp. 2d 1233 (S.D. Fla. 2005) (city fire chief’s summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records).

However, in *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court cautioned that the Public Records Act “may not be used in such a way to obtain information that the legislature has declared must be exempt from disclosure.” Thus, a request for agency records may not be phrased or responded to in terms of a request for the specific documents asked for and received by a law enforcement agency during the course of an active criminal investigation. AGO 06-04. Compare AGO 08-33 (list of law enforcement officers who have been placed on administrative duty is a public record; the list is not confidential pursuant to section 112.533[2][a], F.S., providing for confidentiality of complaints filed against a law enforcement officer); and AGO 07-15 (statutory exemption authorizing certain corporations to request confidentiality of information relating to the company’s interest or plans to relocate to the state may be cited by a records custodian as statutory authority for withholding information from public disclosure without violating the confidentiality provisions of the exemption).

However, s. 119.07(1)(e), F.S., “requires only record-by-record—not redaction-by-redaction—identification of the exemptions authorizing the redactions in each record.” *Jones v. Miami Herald*



Media Company, 198 So. 3d 1143 (Fla. 1st DCA 2016). The court upheld the agency's use of a form with checkboxes identifying the various statutory exemptions relied upon for the redactions in the records and rejected the petitioner's contention that the agency should have specified which exemption applied to which redaction. And see *Lopez v. State*, 696 So. 2d 725 (Fla. 1997) (state attorney's contention that requested records were work product and not subject to public records disclosure was sufficient to identify asserted statutory exemptions). "The merit of imposing a duty on the Department to identify each document in a record that it asserts to be exempt under the [Public Records] Act—similar to the generation of a privilege log in response to a civil discovery request—is a matter properly addressed to the legislature rather than this court." *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018).

It has been held that a federal agency subject to the federal Freedom of Information Act, 5 U.S.C. s. 552, must, in addition to providing a detailed justification of the basis for claimed exemptions under the Act, specifically itemize and index the documents involved so as to show which are disclosable and which are exempt. See *Vaughn v. Rosen*, 484 F.2d 820, 827-828 (D.C. Cir. 1973), cert. denied, 94 S.Ct. 1564 (1974). However, a Florida court refused to apply the Vaughn requirements to the state Public Records Act. See *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), review denied, 475 So. 2d 695 (Fla. 1985).

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