

2-E-6 | DISCOVERY OF EXEMPT OR CONFIDENTIAL RECORDS

An exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings. See *Department of Health v. Poss*, 45 So. 3d 510 (Fla. 1st DCA 2010); *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). "Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope." *Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984). See also *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So. 2d 1322 (Fla. 2d DCA 1990), review denied, 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). Cf. *League of Women Voters v. Florida House of Representatives*, 132 So. 3d 135, 153 (Fla. 2013) ("if the circuit court concludes, after undertaking an in camera review of any disputed documents, that draft [apportionment] plans are exempt from public records disclosure, the circuit court should still require the Legislature to produce the draft apportionment maps and supporting documents under appropriate litigation discovery rules, to the extent these documents do not contain information regarding individual legislators' or legislative staff members' thoughts or impressions").

For example, in *B.B. v. Department of Children and Family Services*, 731 So. 2d 30 (Fla. 4th DCA 1999), the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure." *Id.* at 34. Compare *Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit"). And see *Delaurentos v. Peguero*, 47 So. 3d 879 (Fla. 3d DCA 2010) (while the exemption for employee medical information in s. 119.071[4][b] did not preclude the discovery of a police officer's pre-employment psychological



evaluation, the estate's request for the evaluation in a wrongful death case filed against the officer and county was, under the circumstances of the case, outside the scope of permissible discovery).

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