

2-F-1 | APPLICATION OF FEDERAL CONFIDENTIALITY REQUIREMENTS TO FLORIDA PUBLIC RECORDS

Generally, records that would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be withheld from a public records request, and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Art. VI, U.S. Const., the state must keep the records confidential. See *Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law prohibits public disclosure of social security numbers in state teacher certification database); AGOs 90-102 and 74-372. Compare *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); AGOs 85-03, 81-101, and 80-31. See also *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997) (exemptions from disclosure set forth in federal Freedom of Information Act apply to federal agencies but not to state agencies).

Federal confidentiality requirements may be a concern if the Florida governmental entity or officer is acting as an instrumentality or agent of the federal government. In such a case, a federal agency may assert ownership of records and assert federal jurisdiction and protection of such records. See, e.g., *U.S. v. Story County, Iowa*, 28 F. Supp. 3d 861, 872 (S.D. Iowa 2014) (emails of sheriff from his county email account were sent in his capacity of an appointed board member of an independent authority within an agency of the United States Department of Commerce, and were federal records subject to federal jurisdiction since "the subject emails were not 'produced by or originated from' [the sheriff's] role as ... Sheriff nor were they held by [the sheriff] in his official capacity as ... sheriff."). Compare *Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994) (tenant records of a state public housing authority were not protected under federal law because the federal agency was not involved in the day-to-day operations of the authority).

Records received from a federal agency may have a statutory or regulatory basis for protection. *Morris v. Whitehead*, 588 So. 2d 1023 (Fla. 2d DCA 1991) (holding confidential records received by a state run housing authority from the federal government may not be disclosed where there was a statutorily-authorized agreement between agencies that the state housing authority will maintain



the confidentiality of the materials received); *Miami Herald Media Company v. Florida Department of Transportation*, 345 F. Supp. 3d 1349, 1356 (N.D. Fla. 2018) (state agency could not disclose records when federal safety board investigating bridge collapse took control over dissemination of records relating to the investigation, designated the Florida Department of Transportation (FDOT) as a party to assist NTSB in the investigation, and directed the state agency to not disclose the information contained in those records by agreement and as authorized by federal regulation); but see *Lakeland Ledger Publishing Co. v. Sch. Bd. of Polk Co.*, GV-G-91-3803 (Fla. 10th Cir. Ct. Nov. 21, 1991), available online in the Cases database at the open government site at myfloridalegal.com (relying on *Morris v. Whitehead*, *supra*, to determine a map prepared by the U.S. Justice Department concerning desegregation of Lakeland schools and given to school district employees was a public record and open to inspection).

If litigation ensues with respect to whether the disclosure of a record is subject to federal law, under some circumstances the federal agency may be considered a real party in interest, and the matter may be removed to federal court. See e.g., *Miami Herald Media Company v. Florida Department of Transportation*, *supra*, 345 F. Supp. 3d at 1356 (denying a motion to remand case to state court after the United States removed matter to federal district court because the federal agency in the suit was a real party in interest); compare *In re Motion to Compel Compliance to Minnesota Department of Health v. All Temporaries Midwest, Inc.*, 423 F. Supp. 3d 670, 678 (D. Minn. 2019) (remanding matter to state court despite assertion of federal agency that it was a real party in interest; subpoenaed records were collected pursuant to state law and a state investigation, and thus subject to state law, notwithstanding a joint investigation by the federal agency.).

Records do not become subject to disclosure merely because they are not entitled to federal protection. *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (records provided by the United States Attorney's Office to a criminal defendant were active criminal investigative records in the hands of the Florida governmental entities).

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