

1-C-4 | CONFIDENTIAL RECORDS DISCUSSIONS

The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, s. 286.011, F.S., should be construed as containing no exceptions. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

The Public Records Act was amended in 1991 after several district courts held that certain proceedings could be closed when considering confidential material. Section 119.07(7), F.S., provides that an exemption from s. 119.07, F.S., "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. See AGOs 10-04 and 91-75 (school board), 04-44 (PRIDE), 93-41 (county criminal justice commission), and 91-88 (pension board).

For example, while s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to a planned corporate relocation to Florida, this exemption "applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law...." AGO 04-19. Accord AGO 80-78 and Inf. Op. to Rooney, June 8, 2011.

In AGO 05-03, the Attorney General advised that a federal law prohibiting disclosure of certain identifying information did not authorize a state committee to close its meetings, although the committee should take steps to ensure that identifying information is not disclosed at such meetings. And see AGO 12-20 (county transportation board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the open meetings requirements in the Sunshine Law; however, the board must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the statute is present). Cf. AGO 96-40 (town may not require a complainant to sign a waiver of confidentiality before accepting a whistle-blower's complaint for processing since the Legislature has provided for confidentiality of the whistle-blower's identity).



Similarly, in AGO 96-75, the Attorney General's Office advised that since under s. 286.011(8), F.S., the transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, the city and its attorney should be sensitive to any discussions of confidential medical reports during such a meeting and take precautions to protect the confidentiality of such medical reports so that when the transcript is opened for inspection, the privacy of the employee will not be breached. Compare *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the statements made in AGO 96-75, regarding taking steps to protect confidentiality and privacy applied to "an individual's medical record in the context of a workers' compensation claim," and did not address "the confidentiality of mediation communications involving information regarding multiple persons," these mediation communications are confidential pursuant to ss. 44.102(3) and 44.405(3), F.S., and should be redacted from the full public transcript. [Emphasis supplied by the court].

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