2-C-11 | FINANCIAL RECORDS

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. See AGO 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

a. Audit Reports

(1) Auditor General audits

The audit report prepared by the Auditor General is a public record once finalized. Section 11.45(4)(c), F.S. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. Id. And see AGO 79-75 ("the term 'audit work papers and notes' should be construed narrowly and limited to such 'raw data' as is commonly considered to constitute the work papers of an accountant"). Cf. s. 11.51(4), F.S. (work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product are exempt from disclosure).

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. The list of audit findings is a public record. AGO 79-75.

(2) Local government audits

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(b), F.S. The audit becomes final when the audit report is presented to the unit of local government; until the audit becomes final, the audit workpapers and notes related to such audit report are confidential. Id.

Thus, a draft audit report of a county legal department prepared by the clerk of court, acting in her capacity as county auditor, did not become subject to disclosure when the clerk submitted copies of her draft report to the county administrator for review and response. Nicolai v. Baldwin, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). According to the exemption, the report would become "final," and hence subject to disclosure, when presented to the county commission. Id.

Similarly, draft audit reports relating to city towing companies did not become subject to disclosure even though the towing companies, who had reviewed the reports pursuant to city policy, shared the reports with a news organization which subsequently published an article about them. The court said its decision was compelled by the plain language of the statute, concluding that because the draft audit reports were not final, they were not subject to disclosure. City of Miami Beach v Miami New Times, LLC, 314 So. 3d 562 (Fla. 3d DCA 2020). And see Rushing v. Barfield, No. 2011-CA-5864-NC (Fla. 12th Cir. Ct. August 4, 2011), per curiam affirmed, 83 So. 3d 718 (Fla. 2d DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (even though an audit has been completed with regard to some matters, clerk authorized to redact those portions of workpapers and notes relating to additional matters under investigation until the audit relating to the additional matters is concluded).

The term "internal auditor" is not defined for purposes of this exemption. However, the term would appear to encompass an official within county government who is responsible under the county code for conducting an audit. AGO 99-07. Compare AGO 04-33 (exemption does not apply to audit of guardianship files prepared by clerk of court because that audit "is not an internal audit performed by or on behalf of any of the specified units of local government").

(3) State agency inspector general audits

Section 20.055(2), F.S., establishes the Office of Inspector General in each state agency. Pursuant to s. 20.055(6), F.S., the inspector general is required to conduct audits of the agency and prepare audit reports of the findings. Such audit reports and workpapers are public records to the extent that they do not include information which has been made confidential and exempt from disclosure. Section 20.055(6)(b), F.S.

b. Bids, Proposals and Financial Statements

Section 119.071(1)(b)2., F.S., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening "the bids, proposals, or final replies," whichever is earlier. Cf. s. 255.0518, F.S., providing that notwithstanding s. 119.071(1) (b), F.S., agencies receiving sealed bids pursuant to a competitive solicitation for construction or repairs of a public building or public work, must open the bids at a public meeting conducted in compliance with the Sunshine Law, and must also announce bidder and price information at that meeting.

The term "competitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S. And see s. 286.0113(2)(c), F.S., providing an exemption for the recording of, and records presented at, an exempt meeting held pursuant to s. 286.0113(2) (b), F.S. For more information on this exemption, please refer to the discussion on page 35-36.

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from disclosure requirements. Section 119.071(1)(c), F.S. See also s. 119.0713(3), F.S., limiting access to materials used by municipal utilities to prepare bids; s. 339.55(10), F.S., providing an exemption for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank; and s. 337.168, F.S., providing restrictions on disclosure of Department of Transportation cost estimates, persons requesting bid packages, and the bid analysis and monitoring system.

c. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. Bay County School Board v. Public Employees Relations Commission, 382 So. 2d 747 (Fla. 1st DCA 1980); Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976); and City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157, 298 So. 2d 478 (Fla. 1st DCA 1974). Accord Inf. Op. to Pietrodangelo, Nov. 29, 1972 (financial operating budget of athletic department of state university constitutes a public record). Cf. News-Press Publishing Company, Inc. v. Carlson, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), holding that the preponderant interest in allowing public participation in the budget process justified the inclusion of an agency's internal budget committee within the provisions of the Government in the Sunshine Law.

The exemption afforded by s. 447.605(3), F.S., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. Warden v. Bennett, supra. See also AGO 92-56 (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

d. Economic Development Records

(1) Business location or expansion plans

If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency maintain the confidentiality of information concerning the entity's interest in or plans to locate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first. Section 288.075(2)(a)1., F.S. Confidentiality may be extended for up to an additional 12 months upon the written request of the private entity if the agency finds that the private entity is still actively considering locating or expanding its business activities in Florida. Section 288.075(2)(a)2., F.S. If a final project order for a signed economic development agreement is issued, then the information remains confidential for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality specified in s. 288.075(2)(a)1. or s. 288.075(2)(a)2., F.S. And see s. 288.075(2)(b), F.S., restricting public officials from entering into binding agreements with the private entity requesting confidentiality until 90 days after the information has been made public, unless certain conditions are met.

The term "economic development agency" means the state Department of Economic Opportunity, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority. Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency. The term also includes private persons or agencies authorized by the state, a county or a municipality to promote the general business interests of the state or that municipality or county. Section 288.075(1)(a), F.S.

The Legislature's designation of those entities which are considered economic development agencies for purposes of s. 288.075, F.S., precludes any other entities from falling under the definition. See AGO 12-36 (St. Augustine-St. Johns County Airport Authority is not an "economic development agency" as defined in s. 288.075, F.S.). Cf. Inf. to Rooney, June 8, 2011 (if by amendment of the county charter, the voters made the county commission a part of the county economic development agency by placing the executive director of the agency under the direct supervision of the county commission, then the provisions of s. 288.075, F.S., would apply to the county commission).

A written request for confidentiality under s. 288.075(2), F.S., may constitute or contain information required to be held confidential under that statute; however, such a determination must be made by the custodian on a case-by-case basis as to whether a particular record or portion of a record falls within the scope of the exemption. AGO 07-15. The section, however, may be cited by the records custodian as statutory authority for withholding information from public disclosure without violating the required confidentiality provisions of the statute. Id. Cf. AGO 80-78 (county industrial development authority permitted to withhold access only to those records "clearly falling" within the exemption provided in s. 288.075; "policy considerations" do not justify nondisclosure of public records).

Development plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer considering expansion or relocation within the city appear to come within the scope of the exemption. AGO 04-19. However, the burden is on the economic development agency "to carefully and in good faith distinguish between those documents clearly covered by the exemption and those not covered." Id.

Trade secrets, as defined in s. 688.002, F.S., contained in the records held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. Proprietary confidential business information held by an economic development agency is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. Section 288.075(4), F.S. Federal employer identification numbers, reemployment assistance account numbers, or Florida sales tax registration numbers held by an economic development agency are confidential and exempt. Section 288.075(5), F.S. In addition, certain information held pursuant to the administration of an economic incentive program is confidential and exempt for limited periods as specified in the exemption. Section 288.075(6), F.S. And see s. 288.075(7), F.S. (tax returns, financial information, and credit history information held by a state or federally funded small business loan program).

(2) Convention center booking business records

Booking business records of a public convention center, sports facility, or auditorium are exempt from public disclosure. Section 255.047(2), F.S. The statute defines "booking business records" to include "client calendars, client lists, exhibitor lists, and marketing files." Section 255.047(1)(a), F.S. The term does not include "contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event." Id. And see s. 125.0104(9) (d)1., F.S. (providing an exemption for information given to a county tourism promotion agency, which, if released, would reveal the identity of those who provide information in response to a sales promotion, advertisement, or research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data).

e. Ownership Records for Registered Public Obligations

Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. Section 279.11, F.S.

f. Personal Financial Records

In the absence of a statutory exemption, financial information prepared or received by an agency is subject to Ch. 119, F.S. See Wallace v. Guzman, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure). See also Inf. Op. to Lovelace, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records).

(1) Bank Account, Debit and Credit Card Numbers

Bank account numbers, and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), F.S. See also s. 119.0714(1)(j), (2)(e) and 3(b), F.S., regarding confidentiality of bank account numbers and debit, charge, and credit card numbers contained in court and official records.

(2) Consumer Financial Information

There are statutes which exempt consumer financial information received by certain agencies. For example, s. 624.23, F.S., provides confidentiality for personal financial information held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code. See State, Department of Financial Services v. Danahy & Murray, 246 So. 3d 466 (Fla. 1st DCA 2018), upholding the constitutionality of the statute. See also s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); s. 627.351(6)(x)1., F.S. (claims and underwriting files of the Citizens Property Insurance Corporation, except as provided in the exemption); s. 119.071(5) (f), F.S. (health or property insurance information provided by applicants or participants in government housing assistance programs); and s. 655.057(1)(c), F.S. (personal financial information contained in investigation records of the Office of Financial Regulation).

(3) Financial Information Submitted by State Licensure Applicants

In the absence of statutory exemption, financial information in a licensing file is subject to disclosure. See AGO 04-16. However, the Legislature has enacted exemptions for financial information held by certain licensing agencies. For example, credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers and mortgage lenders are confidential. Section 494.00125(3) F.S. Financial information submitted by license applicants to the Department of Business and Professional Regulation is also confidential. Section 455.229(1), F.S. And see s. 456.014(1), F.S. (Department of Health license applicants). Cf. Surterra Florida, LLC v. Florida Department of Health, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court finding that identities of investors and partners listed in applications to dispense medical cannabis were not confidential trade secrets). For more information on disclosure issues relating to trade secrets, please refer to the discussion of that topic in pages 159-160.

(4) Temporary Cash Assistance Program Participant

Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant is confidential. Section 414.295(1), F.S.

(5) Toll Payment Personal Identifying Information

Section 338.155(6), F.S. provides an exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities.

(6) Utility Payment Records

Agency records of payments for utility services are subject to disclosure. See AGOs 88-57 (county records of payments made by individuals for waste collection services are public records), and 92-09 (customer delinquency information held by a utilities commission is subject to disclosure). Cf. s. 119.0713(5)(a), F.S., providing an exemption for customer meter-derived data and billing information in increments less than one billing cycle.

g. Taxpayer Records

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. See, e.g., s. 213.053(2)(a), F.S. (all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential except for official purposes and exempt from s. 119.07[1], F.S.); s. 213.21(3), F.S. (records of compromises of taxpayer liability not subject to disclosure); and s. 213.27(6), F.S. (confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from public disclosure and such debt collection or auditing agencies are bound by the same confidentiality requirements as the department). Cf. Wallace v. Guzman, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns submitted by housing finance authority members to state banking agency as part of the authority’s application to organize a bank are subject to disclosure).

In addition, s. 193.074, F.S., provides for confidentiality of certain taxpayer information. In light of the position taken by the Department of Revenue that its form entitled “Original

Application for Ad Valorem Tax Exemption” constitutes a “return,” such form should be treated as a “return” that is confidential pursuant to s. 193.074, F.S. AGO 05-04. Accord AGO 95-07. And see NYT Management Services, Inc. v. Florida Department of Revenue, No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006), available online in the Cases database at the open government site at myfloridalegal.com (declarations or written statements filed with the Department of Revenue pursuant to the state’s revenue laws would be a return and thus confidential under s. 193.074, F.S.).

A taxpayer's e-mail address held by a tax collector for purpose of sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices, as provided in cited statutes, is exempt from public disclosure requirements. Section 197.3225, F.S. Cf. s. 288.075(7), F.S. (tax returns held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from public disclosure).

However, taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute. AGO 01-74. Cf. Inf. Op. to Echeverri, April 30, 2010 (while property appraiser may use confidential records submitted to the value adjustment board by the taxpayer, it is not clear whether property appraiser may independently submit confidential material to the board in the absence of a taxpayer's submission although board may order production of confidential records). Similarly, absent a specific statutory exemption for assessment rolls and public information cards, such documents made or received by the property appraiser are public records subject to the Public Records Act, regardless of the confidentiality of a return that may contain information used in their creation. AGO 05-04.