

**STUDY COMMITTEE
ON PUBLIC RECORDS**

*Examination of the Effects of Advanced Technologies
on Privacy and Public Access to
Court Records and Official Records*

FINAL REPORT

**A committee created
by the Florida Legislature**

February 15, 2003

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INTRODUCTION

In recent years, legislative, executive, and judicial branch initiatives have actively sought to maximize the benefits of advanced information management technologies including the Internet. These initiatives encourage and promote electronic access, electronic filing, and a host of other electronic activities involving a vast array of documents and information. In addition to reducing costs, the use of these advanced technologies is streamlining and improving the efficiency and effectiveness of governmental operations. These advanced technologies are facilitating, if not revolutionizing, the way information is shared, exchanged, stored, retrieved, and accessed.

Until recently, few persons other than attorneys, researchers, media, or other commercial users possessed the knowledge, patience, or financial means to comb or extract specific or bulk information from government records, especially court records¹ and official records.² Advanced technologies are removing the logistical, geographical, and physical obstacles that have impeded universal public access to information that has always been available in public records. The expanding ease of *electronic access* to this information, however, has fostered a deliberative re-examination and debate at the

¹ Court records, a subcategory of judicial records, are public records which the public has a right to inspect and copy except to the extent that information therein is confidential or exempt under state and federal law, or is sealed through court order. Court records are currently defined in court rules as the contents of a court file, depositions, transcripts, exhibits, electronic, video, and stenographic tapes of depositions and other proceedings. See Rules 2.051 and 2.075, Florida Rules of Judicial Administration.

² Official records are also public records. Official records are documents which the clerk is required or authorized to record. See s. 28.222(3), F.S., for an enumeration of "official records" as follows: deeds; leases; bills of sale; agreements; mortgages; notices or claims of lien; notices of levy; tax warrants; tax executions; and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens; and powers of attorney relating to any of the instruments; notices of lis pendens; judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments; that portion of a certificate of discharge, separation, or service which indicates the character of discharge, separation, or service of any citizen of this state with respect to the military, air, or naval forces of the United States; notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens, in accordance with the laws of the United States; certified copies of petitions, with schedules omitted, commencing proceedings under the Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings; certified copies of death certificates authorized for issuance by the Department of Health which exclude the information that is confidential under s. 382.008, F.S., and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008, F.S.

state and national levels on the policies and practices affecting the right of access to public records and the right of privacy.

EXECUTIVE SUMMARY

In 2002, the Florida Legislature created a 22-member Study Committee on Public Records (hereinafter referred to as "Study Committee").³ The law set forth a formidable legislative directive for the Study Committee to address a broad scope of issues regarding court records, official records, privacy, and public access. Led by Chairman E. Thom Rumberger and Vice-Chair Jonathan D. Kaney, Jr., the Study Committee focused on the effect of advanced information management technologies, including the Internet, on the collection and dissemination of information contained in court records and official records, and the interplay with the right of privacy.

Nine members of the Study Committee served in an advisory, non-voting capacity.⁴ The Advisory Subcommittee, chaired by Margaret O'Sullivan Parker, was responsible for informing the Study Committee about the information contained in agency records pertaining to children and family issues of a sensitive nature that might possibly need to be made exempt from public disclosure. The Advisory Subcommittee was also responsible for advising the Study Committee on agency policies and procedures regarding the flow and sharing of information between the courts and the agencies as pertained to children and families in the court system.

The Study Committee held 9 six-hour meetings. Two of those meetings included public hearings held in Orlando and Miami. The Study Committee received and discussed numerous documents and publications, reviewed literature and other sources,⁵ heard from speakers and other interested stakeholders, and took public testimony.⁶

In addition, the Advisory Subcommittee invited representatives from other agencies who made presentations and provided information to the full Study Committee. These presentations included copies of agency statutes, rules, and policies; discussions of the primary issues that the agencies deal with when agency records are used in judicial proceedings; information regarding the volume and scope of court proceedings; and specific examples of recent cases. Agencies that took part included the Department of Children and Family Services, the Department of Education, the Department of Health, the Department of Highway Safety and Motor Vehicles, the Department of Juvenile Justice, the Department of Law Enforcement, and the Department of Revenue. The

³ See ch. 2002-302, L.O. F. The term of the Study Committee expires June 30, 2003.

⁴ See Appendix A for list of members.

⁵ See Appendix B for the bibliography.

⁶ See the Minutes and tape recordings for each study committee meeting for further details. Meeting dates: August 23, 2002; September 6, 2002; September 25, 2002; October 30, 2002; November 22, 2002; December 5, 2002; December 19, 2002; January 17, 2003; and February 10, 2003.

Advisory Subcommittee presented five general conclusions to the Study Committee that were used as the basis for further discussion.⁷

The Study Committee developed a chart of conceptual recommendations that became the committee's primary and evolving working product. The chart also offered background and comments to assist members as to the issues behind the recommendations. At the January 17, 2003, meeting, the Study Committee took formal action and voted on the conceptual recommendations, some of which were substantially amended prior to adoption. On February 10, 2003, the Study Committee completed its vote on all conceptual recommendations. The Study Committee also voted on the final report, which includes the final recommendations, for submission to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives, by February 15, 2003.⁸

⁷ See Memo on Summary of Issues, from Margaret O'Sullivan Parker, Chair of the Advisory Subcommittee for the Study Committee, November 20, 2002, which included the following general conclusions:

- 1) The confidentiality of materials held by state agencies is governed by state statute, specific exemptions in chapter 119, F.S., and federal laws.
- 2) Agencies currently have statutory procedures in place that address confidentiality of documents related to minors, family issues, and criminal and financial information.
- 3) Agencies have internal policies to address the confidentiality of documents, employee handling of documents, the dissemination of documents under interagency agreements, and response to requests for access to documents.
- 4) Confidential and/or sensitive information is disseminated to courts under various statutory provisions, in camera inspections, and protective orders that allow for the use of the material without its public disclosure.
- 5) While some incidents of improper disclosure do occur, agencies generally report no outstanding problems with the handling and disclosure of documents in the judicial system.

⁸ Although January 1, 2003, served as the statutory deadline for the Study Committee to submit its final report including any recommendations, it became necessary for the committee to extend its deadline. Acknowledging its late start due to delayed membership appointments, the membership expressed a desire to hold two out-of-town meetings and to gather, review, and discuss additional information. A letter was sent to the Governor, President of the Senate, Speaker of the House of Representatives, and the Chief Justice of the Supreme Court explaining the basis for a deadline extension. The report deadline was extended to February 15, 2003. See STUDY COMMITTEE ON PUBLIC RECORDS, Minutes for the November 22, 2002 Meeting. See also December 6, 2002, Letter from Chairman E. Thom Rumberger.

FINAL RECOMMENDATIONS

The members of the Study Committee acknowledge that the constraints of time and the complexity of the issues significantly limited their ability to address the issues at the level of detail requested by the Legislature. Many issues warrant further in-depth and focused review in order to develop specific policies and proposals. It is the hope of the Study Committee that its efforts will contribute positively to the ongoing multi-branch efforts in formulating and implementing public policies and practices regarding public records access and privacy that will benefit the State of Florida and its citizens.⁹ In answer to our legislative charge, the Study Committee offers the following final recommendations¹⁰:

- Recommend to the Florida Supreme Court that it reexamine Fam. L. R. P. 12.285 to minimize the collection and filing of unnecessary personal and identifying information, but to allow for exchange of meaningful substantive information between the parties and, if necessary, access to the court.
- Official records should be made freely available electronically by the clerks of the circuit court or official recorders without impediment or restriction, unless made confidential or exempt from disclosure under Florida law.
- For a period of two years, certain court records as determined by the Florida Supreme Court that are not part of the Official Record should not be accessible on the Internet (either by subscription or otherwise) and should not be made available for electronic transfer in bulk. Until such time as electronic dissemination is authorized pursuant to court rules, the Florida Supreme Court should direct that court records which are not official records shall not be disseminated electronically, whether via Internet access, bulk electronic release or by other means. During such time period, the courts should conduct studies to

⁹ The Florida Supreme Court deferred further action by the Judicial Management Council in studying these issues pending the outcome of this Study Committee's report and recommendations. See 27 F.L.W. S933 (Fla. Nov. 7, 2002).

¹⁰ The Advisory Subcommittee also provided recommendations that were not voted on by the Study Committee. Those recommendations are as follows:

- Recommend that provisions be adopted prohibiting the unilateral dissemination (redisclosure) of a confidential or exempt record held by an agency, and/or imposing a civil/criminal penalty.
- Recommend maintaining the confidential and exempt status of the Inspector General's investigative reports.
- With regards to student records, recommend enhancing the ability to be removed from the release of student directory information under s. 228.093(3), F.S.

determine whether and to what extent information contained in court records should be accessible over the Internet.¹¹

- Recommend to the Florida Supreme Court that rules be adopted which set forth procedures, in accordance with the public records laws, regarding receipt and Internet dissemination of publicly accessible information that is contained in court records, with consideration of:
 - a) A uniform process for the electronic or paper intake of information to control or minimize influx of unnecessary sensitive, personal, and identifying information.
 - b) A uniform process for redaction in order to screen and protect the inadvertent disclosure of confidential or exempt information.
 - c) A uniform process for the collection of sensitive, personal, and identifying information necessary for court case management purposes.
 - d) A uniform process for posting and distribution of a privacy notice that informs the public of their rights under the law.

- Recommend that the Florida Supreme Court provide for its own review and submission to the Legislature of categories of information that it legitimately needs and collects that are not currently confidential or exempt but should be as necessary to protect the privacy and safety of the public in accordance with policies underlying s. 23 of Art. I of the Fla. Const. (right of privacy) and s. 24 of Art. I of the Fla. Const. (access to public records).

- Recommend that the Legislature conduct a review of existing categories of confidential or exempt information in publicly accessible records of the court; the underlying basis for their continued confidential or exempt status; and whether

¹¹ The purpose of court records is to provide information necessary for the exercise of the judicial function. The performance of that function frequently requires courts to collect and retain information that is confidential or exempt from public disclosure, as well as information about people and entities that is not confidential or exempt, but is nonetheless highly personal and sensitive. Presently reliable mechanisms do not exist to facilitate the identification and redaction of confidential or exempt information within court files. Further, long-standing practices and procedures of the courts do not contemplate the possibility that information that is contained in court files may be subject to widespread electronic dissemination, with the concomitant capabilities to replicate, transmit, and analyze information within them.

Before electronic dissemination of court records can be implemented, measures must be developed and implemented to prevent the disclosure of confidential or exempt information. Further, practices and procedures of the courts must be broadly examined in recognition of the possibility that records will be electronically disseminated. The responsibility and authority to determine policies controlling the management of records of the judicial branch, including court records, resides with the Florida Supreme Court. Provisions of s. 28.2221, Florida Statutes, which restrict the Internet publication of certain court records, should be repealed.

they should continue to be confidential or exempt from public records.

- Recommend that an interim project or task force focus on the review and identification of existing laws, policies and practices and technological resources that are impeding interagency exchange and flow of confidential or exempt information between the agencies and the court relating to the interests of children. The task force should review existing public records exemptions intended to protect children for the purpose of determining whether and to what extent such exemptions may tend to do greater harm than good for the children.
- Recommend that the topic of the "Clerk of the Court: Custodial Duties Including Redaction" be the subject of narrow study by a task force and that it include:
 - a) An examination of the fiscal impact and the logistics involved in the redaction of confidential or exempt information in court records and official records;
 - b) Recommendations as to who should be responsible for redaction (*e.g.*, the clerks of the court, the filer of the document including the pro se litigant, the attorney, or the court case manager); and
 - c) The extent of criminal or civil liability for the failure to redact confidential or exempt information and for the unauthorized or inadvertent disclosure of such information that results in unwarranted, inadvertent or unlawful invasion of privacy or damage to personal or professional reputation.
- Recommend that the Legislature enact a statutory definition for redaction to assist the clerks of the court in the management of confidential or exempt information contained in court records, official records, and public records in conjunction with the constitutional guidelines for public access.
- Recommend legislative action to initiate a multi-year project to reorganize chapter 119, F.S., topically such that all the public records exemptions are located within chapter 119, F.S.; to co-locate all fee provisions and general public records policies; and to reduce the redundancy of multiple exemptions affecting the same confidential or exempt information applicable to different entities.
- Recommend that each public records exemption be reviewed every five years by the Legislature, rather than just at the end of the first five-year period.
- Recommend any legislative changes that would place greater responsibility (lessen immunity) on credit card companies, reporting bureaus, or commercial entities to implement better verification procedures and other protective

measures against fraudulent use or misuse of identifying information, and to assist and provide better cooperation with victims of identity theft or fraud in prompt resolution of credit history problems. Propose joint resolution to Congress regarding state input on sunset review of the Fair Credit Reporting

Act. Recommend this proposal as subject for narrow study by specialized task force of financial industry practices regarding suppliers of consumer information and other data.

- Recommend to the Legislature that it create topical work groups or task forces to more narrowly focus on major areas or issues identified by the Study Committee as needing further deliberative study as provided under the aforementioned conceptual recommendations.

APPENDIX A

Membership of the Study Committee on Public Records

- Mr. E. Thom Rumberger, Chair** *Appointed by Governor*
Attorney with Rumberger, Kirk and Caldwell
- Mr. Jonathan D. Kaney, Jr., Vice-Chair** *Appointed by Governor*
Attorney with Cobb and Cole and General Counsel for the First Amendment
Foundation
- Ms. Margaret O'Sullivan Parker*** *Appointed by Governor*
Vice-Chair of Advisory Subcommittee,
Deputy General Counsel for the Florida Department of Education
-
- Ms. Kristin Adamson** *Appointed by Senate President*
Attorney for Novey, Mendelson and Adamson
- Ms. Nancy E. Barshter*** *Appointed by Senate President*
Office of the Attorney General (no longer with OAG as of 12/2002)
- Dr. Robert Bledsoe*** *Appointed by House Speaker*
Associate Dean of Research Graduate Studies, University of Central Florida
- Rep. John Carassas** *Appointed by House Speaker*
Attorney and Representative for the 54th District
- Mr. Joseph E. Carroll** *Appointed by Governor*
Southeastern Regional Manager, Lexis/Nexis-National Fraud Center
- Mrs. Nora M. Gledich** *Appointed by Governor*
Public interest representative
- Rep. J. Dudley Goodlette** *Appointed by House Speaker*
Attorney and Legislator for the 76th District
- Hon. Charlie Green** *Appointed by Fla. Assn. of Court Clerks*

Clerk of the Circuit Court for Lee County

Hon. Jacqueline R. Griffin

Appointed by Chief Justice

Appellate Judge for the 5th District Court of Appeal

Mr. Doug Guetzloe* President of Advantage Consultant	<i>Appointed by House Speaker</i>
Hon. Thomas D. Hall* Clerk of the Florida Supreme Court	<i>Appointed by Chief Justice</i>
Hon. Judith L. Kreeger Circuit Judge for the 11 th Judicial Circuit	<i>Appointed by Chief Justice</i>
Ms. Jennifer Lima-Smith* Regional Legal Counsel for the Florida Department of Children and Families	<i>Appointed by Governor</i>
Michael R. Ramage* General Counsel for the Florida Department of Law Enforcement on behalf of appointee Commissioner Tim Moore	<i>Appointed by Governor</i>
Mr. Robert N. Sechen* General Counsel for Florida Department of Juvenile Justice	<i>Appointed by Governor</i>
Hon. R.B. "Chips" Shore Clerk of the Circuit Court for Manatee County	<i>Appointed by Senate President</i>
Robin Hassler Thompson* Attorney and Domestic Violence Advocate	<i>Appointed by Senate President</i>
Terry Vargo, Sr. Chief Lending Officer for Citizens Bank of Oviedo	<i>Appointed by House Speaker</i>
Senator Alex Villalobos Attorney and Legislator for the 38 th District	<i>Appointed by Senate President</i>

***Advisory, non-voting members**

APPENDIX B

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