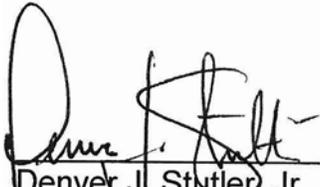


Approved:



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Secretary

Effective: October 10, 2006
Office: General Counsel
Topic No.: 050-020-026-d

DISTRIBUTION OF EXEMPT PUBLIC DOCUMENTS CONCERNING DEPARTMENT STRUCTURES AND SECURITY SYSTEM PLANS

PURPOSE:

This procedure defines the process for distribution of public documents that have been defined by 2002 legislation as exempt from **Chapter 119, Florida Statutes (F.S.)**, Florida's public records law. The exemption created by **Section 119.071(3)(b), F.S.**, establishes a method of protecting the State Highway System's infrastructure by defining the responsibilities for disclosure and use of sensitive documents showing the structural elements used in the design and construction of structures as defined in **Section 334.03(28), F.S.**

This procedure also defines the process for distribution of a security system plan or portion thereof defined as exempt from **Chapter 119, F.S.**, Florida's public records law. **Section 119.071(3)(a), F.S.**, creates this exemption and provides that a security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property in the possession of the Department of Transportation ("Department") is confidential and exempt.

AUTHORITY:

Section 334.03(28), Florida Statutes (F.S.)
Section 119.071(3)(b), Florida Statutes (F.S.)
Section 119.071(3)(a), Florida Statutes (F.S.)

SCOPE:

This procedure is to be used by all Department offices in the distribution to persons or entities outside of the Department of copies of building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by the Department ("Exempt Documents"). Such documents are Exempt Documents whether they are archived plans, or used in new construction or maintenance, or for bid preparation purposes. This procedure is also to be used by all Department offices in the distribution to persons or entities outside of the Department of a security system plan or

portions thereof. This procedure applies to both Department internal or contracted staff, including consultants and their agents or employees, who produce such Exempt Documents or security system plans, use such Exempt Documents or security system plans in their Department work, or have other methods of access to such Exempt Documents or security system plans.

BACKGROUND:

In an effort to protect Florida's transportation infrastructure, the 2002 Legislature enacted **Section 119.071(3)(b), F.S.**, which provides that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from a public records request.

Further, **Section 119.071(3)(b), F.S.**, provides that such Exempt Documents may be provided to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or upon a showing of good cause before a court of competent jurisdiction.

Structure is defined in **Section 334.03(28), F.S.**, as "a bridge, viaduct, tunnel, causeway, approach, ferry slip, culvert, toll plaza, gate, or other similar facility used in connection with a transportation facility." The definition in **Section 334.03(28), F.S.**, should be used to determine the meaning of "structure" as that term is used in **Section 119.071(3)(b), F.S.** Therefore, a roadway is not a structure as that term is used in **Section 119.071(3)(b), F.S.** Additionally, portions of the data in PONTIS is exempt from a public records request under the provisions of **Section 119.071(3)(b), F.S.**

Under the definition of structure in **Section 334.03(28), F.S.**, a pipe or pipe system is a structure as that term is used in **Section 119.071(3)(b), F.S.** Therefore, those portions of Department plans that depict pipes or pipe systems are exempt from a public records request under **Section 119.071(3)(b), F.S.**

Section 119.071(3)(a), F.S., provides that security system plans or portions thereof for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property are confidential and exempt from a public records request. A security system plan includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by any agency as defined in **Section 119.011, F.S.**, or by any private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training ("Security System Plan").

In order to provide for the uniform and efficient distribution of Exempt Documents pursuant to **Section 119.071(3)(b), F.S.**, the following steps must be taken:

1. EXEMPT DOCUMENTS

The Department has the discretion to produce documents made exempt by **Section 119.071(3)(b), F.S.**, where the circumstances do not satisfy the limited disclosure expressly authorized by **Section 119.071(3)(b), F.S.**, if it is necessary for the Department to produce the Exempt Documents to perform Department business. For example, plans must be provided to consultants and contractors doing work for the Department. No legislative intent to prohibit production of Exempt Documents under such circumstances can be determined from the letter or the intent of the law. Thus, while Exempt Documents may be produced, Department employees receiving such requests must use reasonable judgment and discretion in producing them.

2. DOCUMENTATION OF DOCUMENT REQUEST

2.1 DOCUMENTATION RELEASED BY THE DEPARTMENT

2.1.1 To provide a process for the distribution of Exempt Documents, the Department has created **Form No. 050-020-26, Exempt Documents and Security System Plan Distribution Form** to be completed whenever documents made exempt by **Section 119.071(3)(b), F.S.** are distributed. The distribution form must be completed by the recipient of Exempt Documents and must include personal identifying information, sufficient facts supporting the requestor's entitlement to the documents as authorized by **Section 119.071(3)(b), F.S.**, if applicable, and the reason for the distribution of the records. All recipients must be qualified and satisfactorily respond to a query of a legitimate need for and use of the Exempt Documents.

2.1.2 Whether a request is made in person, or by mail, facsimile, or email, the Department employee responding to the request shall ensure that the distribution form is complete and in cases where the requestor does not appear in person, shall obtain a copy of appropriate photo identification and documented verification of employment with the requesting agency. The form also advises the recipient that **the entity or person receiving the information shall maintain the exempt status of the information.** However, the Department has created a different request form, **Form No. 375-000-02, Fax Order Form**, to be completed by any person or entity requesting documents made exempt by **Section 119.071(3)(b), F.S.**, when the request is received by the Contracts Administration Office or a District Contracts Office. For requests to the Contracts Administration Office or a District Contracts Office, **Form No. 375-000-02, Fax Order Form**, must be completed by the requestor.

- 2.1.3** Any entity receiving Exempt Documents on a recurring basis may submit to the Department a master list of the names, with appropriate photo identification, of all persons to receive Exempt Documents on behalf of such entity. A distribution of Exempt Documents to an entity submitting a master list may be made to any person identified on the entity's master list. Any such entity must keep the master list current.
- 2.1.4** Where there will be recurring distributions of Exempt Documents to a person or entity with respect to a project, contract, or data-sharing program with governmental partners, **Form No. 050-020-26, Exempt Documents and Security System Plan Distribution Form**, must be completed and signed by the first person receiving the Exempt Documents when the first distribution of Exempt Documents is made and completion of additional distribution forms for subsequent distributions of Exempt Documents with respect to the same project, contract, or data-sharing program with governmental partners is not required.

2.2 BIDDING DOCUMENTATION RELEASED BY OTHERS

Entities or persons may request the Contracts Administration Office or a District Contracts Office to provide documents made exempt by **Section 119.071(3)(b), F.S.**, for the purpose of allowing others to review the documents in connection with bids to be submitted to the Department. The Contracts Administration Office and the District Contracts Offices shall notify these entities or persons that they may release documents made exempt by **Section 119.071(3)(b), F.S.**, if it is for the purpose of allowing others to review the documents in connection with bids to be submitted to the Department and if such other entity or person receiving the Exempt Documents completes a form substantially similar to **Part A of Form No. 050-020-26, Exempt Documents and Security System Plan Distribution Form**.

3. DETERMINATION OF AUTHORITY TO RELEASE EXEMPT DOCUMENTS

Upon completion of a distribution form, the Department employee receiving a request shall make an initial determination of whether the documents can be provided as public records or whether the Department in the exercise of its discretion should provide the records. When in doubt, the employee should contact his/her supervisor, District General Counsel, or the Office of the General Counsel.

4. DISTRIBUTION OF EXEMPT DOCUMENTS

Upon determination that Exempt Documents should be distributed, the provider responsible for distributing the Exempt Documents shall ensure that the documents are copied and that, if applicable, the statutory fee paid by the requestor for the copies received. If the District in which the request is received has an established procedure for documenting and responding

to public records requests, that procedure, in addition to the foregoing should be complied with, to the extent possible. Records of distribution (completed forms) are to be retained in accordance with the ***Records Retention Schedule for Government Agencies*** as issued by the Department of State, Bureau of Archives and Records Management. The retention period is one fiscal year. It is recommended that the records of distribution (completed forms) be retained for three years.

5. DISTRIBUTION OF SECURITY SYSTEM PLANS

In order to provide for the uniform and efficient distribution of Security System Plans pursuant to ***Section 119.071(3)(a), F.S.***, the following steps must be taken:

- 5.1 Security System Plans are confidential and, therefore, can be distributed to persons or entities outside of the Department only in accordance with the limited disclosure provision of ***Section 119.071(3)(a), F.S.***, which provides that Security System Plans may be disclosed by the Department to another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts, and that the confidential and exempt status of such information shall be retained while in the possession of the receiving agency.
- 5.2 To provide a process for the distribution of Security System Plans, the Department has created ***Form No. 050-020-26, Exempt Documents and Security System Plan Distribution Form*** to be completed by any state or federal agency requesting information made exempt by ***Section 119.071(3)(a), F.S.*** The request form must be completed by the requestor and must include personal identifying information, sufficient facts supporting the requestor's entitlement to the documents as authorized by ***Section 119.071(3)(a), F.S.***, and the reason for the request or intended use of the Security System Plan. Whether the request is made in person, or by mail, facsimile, or email, the Department employee responding to the request shall ensure that the distribution form is complete and in cases where the requestor does not appear in person, shall obtain a copy of appropriate photo identification and documented verification of employment with the requesting agency. The form also advises the requestor that **the entity or person receiving the information shall maintain the confidential and exempt status of the information.**
- 5.3 Upon completion of the ***Exempt Documents and Security System Plan Distribution Form***, the Department employee receiving the request shall make an initial determination of whether the Security System Plan can be provided as authorized in ***Section 119.071(3)(a), F.S.*** When in doubt, the employee should contact his/her supervisor, District General Counsel, or the Office of the General Counsel.

5.4 Upon determination that the Security System Plan can be produced to the requestor, the Department employee responsible for completing the request shall ensure that the Security System Plan is copied and that, if applicable, the statutory fee paid by the requestor for the copies received. If the District in which the request is received has an established procedure for documenting and responding to public records requests, that procedure, in addition to the foregoing should be complied with, to the extent possible. Records of distribution (completed ***Exempt Documents and Security System Plan Distribution Forms***) are to be retained in accordance with the ***Records Retention Schedule for Government Agencies*** as issued by the Department of State, Bureau of Archives and Records Management. The retention period is one fiscal year. It is recommended that the records of distribution (completed ***Exempt Documents and Security System Plan Distribution Forms***) be retained for three years.

6. TRAINING

None required

7. FORMS

The following forms shall be provided either in hard copy form (or electronically once databases are in place in the various district offices).

The forms are also available from the Department's Forms Library

050-020-26 Exempt Documents and Security System Plan Distribution Form

375-000-02 FAX Order Form