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MEMORANDUM #008---13HR

TO: Agency Administrators

FROM: Carolyn Horwich, J.D., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Public Records Exemption Request and Revised Form

DATE: May 14, 2013

Purpose: This memorandum is designed to ensure that employees of the entities administratively served by the Justice Administrative Commission (JAC) comply with current statutes and guidelines regarding public records confidentiality requests.

Background: On August 24, 2011, the JAC issued Memorandum #071-11HR and provided with it a form for employees to complete if they wanted their personal information to be exempted from public records requests (see Attachment A). The Memorandum did not provide, however, adequate detail to fully inform those seeking confidentiality of the limitations of such a request. Two scenarios resulted from the insufficiency of information contained in the Memorandum. First, some individuals were left unaware that they were entitled to an exemption under one or more statutory provisions. Second, and more importantly, some employees were left under the mistaken impression that all personal information, including salary, can be exempt from public record, in particular from the website known as "Florida Has a Right to Know" (<http://www.floridahasarighttoknow.com/>) established by Governor Rick Scott. This website retrieves its data from the People First system. Thus, it is critical that privacy indicators tied to requests for confidentiality are processed correctly. The protections available for an individual's personal information are limited by the statutory provision under which the individual falls.

Statutory Exemptions: The statutory subsections most likely to afford an exemption from public records are those available to law enforcement officers, attorneys, guardians ad litem and certain prior employees of the Department of Revenue, Department of Children and

Families, or the Department of Health. JAC employees who have held certain positions in the past may also be eligible for an exemption, if they meet the appropriate statutory criteria. As there are several statutory provisions in Chapter 119, F.S., under which individuals may qualify to have their information exempted from public records requests, it is important that employees refer to the attached Privacy Indicator Questionnaire to determine if they are entitled to an exemption, and if so, under which statutory provision.

For example, s. 119.071(4)(d), F.S., states what information is protected for law enforcement officers and certain attorneys, past and present, as well as spouses and children of those individuals. The statute states, in part:

s. 119.071(4)(d) -- AGENCY PERSONNEL INFORMATION.—

2.a. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

2.d. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Please note: s. 119.071(4)(d), F.S., contains numerous other exemptions from public records. It is important that the employee review the Privacy Indicator Questionnaire carefully to see if he or she falls under any protected class.

- *It is important to note that the relevant provisions of Chapter 119 do not exempt an employee's salary from public records.*
- *Privacy Indicator Questionnaires do not need to be submitted to JAC with New Hire Packets. They are to be processed into People First at the circuit level.*

Privacy Indicators on People First: With regard to an employee's personal information in the People First system, there are four privacy indicator boxes that may be checked. In some cases, more than one box can be checked (see Attachment B). These boxes are: 1) sworn/certified; 2) restricted employee; 3) restricted relative; and, 4) protected identity.

Box 1 is to be checked only if the employee is a former or current holder of a sworn or certified law enforcement or corrections position.

Box 2 is to be checked only if the employee is a former or current State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Assistant State Attorney, Assistant Public Defender, Assistant Criminal Conflict and Civil Regional Counsel, or any other statutorily protected class member. (Many of JAC's privacy indicator actions should fall under Box 2.)

Box 3 is to be checked only if the employee is the spouse or child of an employee who is entitled to check off Box 1 or Box 2. For example, the employee is the spouse of a sworn law enforcement officer or the child of an Assistant State Attorney or the father of an Assistant Public Defender.

Box 4 is to be checked only if the employee has a court order directing that the employee's personal information remain confidential, such as an Order of Protection, or the employee is participating in a program such as a witness protection program. (There should be very few instances in which Box 4 is checked.)

Current situation: There are 9,766 employees under the JAC umbrella in People First.¹ Of those, 688 employees have Box 1 (sworn law enforcement officers) checked. There are 4,628 employees who have Box 2 checked, and 1,560 employees who have Box 3 (relatives) checked. The most restricted privacy indicator Box 4 (protected identity) – has been checked for 561 employees. Based on the statutory criteria required for this privacy indicator, it appears that for many employees, this box has been checked in error.

Action steps: According to the Department of Management Services (DMS), people with a "U" People First HR role code can update Privacy Indicators. The "Restricted Relative" and "Protected Identity" indicators can be checked or unchecked by HR circuit staff at any time. The language below is taken directly from the *HR Professional User Guide* found at: http://www.dms.myflorida.com/human_resource_support/people_first/for_state_hr_practitioners/hr_professional_user_guide

¹ These figures, from early April 2013, are not constant and are used for illustrative purposes only; they are not to be used for any other purpose.

There are two ways for the 'Sworn/Certified' and/or 'Restricted Employee' indicators to be checked on an employee. (1) The 'Sworn/Certified' and/or the 'Restricted Employee' indicators can be checked directly on the employee (PAR or Personal Info screen). (2) If either the 'Sworn/Certified' and/or the 'Restricted Employee' indicators are checked on the Position, the system will automatically check the corresponding indicator on the employee through an overnight batch process. Agency HR Personnel **can uncheck** the 'Sworn/Certified' and/or the 'Restricted Employee' indicators on the Position. Agency HR Personnel **cannot uncheck** the 'Sworn/Certified' and/or the 'Restricted Employee' indicators on the employee.

In order to ensure compliance with Florida's public records laws, JAC is asking each agency to take the following steps.

1. Provide all employees with a copy of this memorandum.
2. Instruct employees to look at their own privacy indicator(s) on People First to review whether the statutorily appropriate box is checked.
3. If the correct privacy indicator box is checked, the employee need do nothing further.
4. If an incorrect privacy indicator box is checked, please have the employee submit a new request to you using the new Privacy Indicator Questionnaire form (Attachment C).
5. Circuit HR staff will then process the correct privacy indicator accordingly in the People First system.
6. If an employee advises you that Box 1 (sworn officer) or Box 2 (restricted employee) is incorrectly checked, please follow steps 1 through 4 above and then steps 7 and 8.
7. Complete the attached spreadsheet with the necessary information.
8. E-mail the spreadsheet to Carolyn.Horwich@justiceadmin.org.

Thank you for your attention to these matters. If there are any questions or if you need any assistance, please contact me at 850-488-2415, ext. 290, or Carolyn.Horwich@justiceadmin.org.

ATTACHMENT A

August 24, 2011

MEMORANDUM #071-11HR

TO: Agency Administrators

FROM: Bobbie Chappell, Director of Human Resources

VIA: Rip Colvin, Executive Director

RE: **Revised Public Records Exemption Request Form**

The Florida Department of State has recently revised the Public Records Exemption: Address/Identification Confidentiality Request Form (see attached).

Florida law allows certain persons to request that an agency not publicly disclose their specific identification and/or location information in any of its agency records. See for example, ss. 119.071 (2)(j), (4)(d) and (5)(i), 265.605, and 267.17, F.S., for applicable exemption and scope of exemption. For our purposes, examples of employees that can request the exemption are State Attorney's, Public Defenders, Guardian ad Litem, etc.

Employees eligible for the exemption need to complete the attached form and return it to our office. You will need to keep a copy on file in your office as well.

Bobbie Chappell, Director of Human Resources
Justice Administrative Commission
227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301

Phone: (850) 488-2415 Ext. 249
Fax: (850) 922-9445



Justice Administrative Commission

ADDRESS/IDENTIFICATION CONFIDENTIALITY REQUEST

PUBLIC RECORDS EXEMPTION/DOS REV. 01/2011

Florida law allows certain persons to request that an agency not publicly disclose their specific identification and/or location information in any of its agency records. See for example, sections 119.071 (2)(j), (4)(d) and (5)(i), 265.605, and 267.17, Fla. Stat. for applicable exemption and scope of exemption. If eligible, submit completed form to your Human Resources Office.

I hereby request the exemption (check applicable exemption category) for the person named below:

- Code Enforcement Officer
- Dept. of Children and Family Services personnel with investigative duties involving abuse, neglect, exploitation, fraud, theft, or other criminal activities
- Dept. of Health personnel whose duties are to support the investigation of child abuse or neglect.
- Dept. of Revenue personnel or local government personnel with duties relating to revenue collection and enforcement or child support enforcement.)
- Donor, or prospective donor,* Cultural Endowment Program Trust Fund, Citizen Support Organizations or National, Historic Landmarks (publicly owned houses)
- Firefighter certified in compliance with s. 633.35, F.S.
- Guardian ad litem (By signature below, it is certified that the person made "reasonable efforts to protect such information from being accessible through other means available to the public.")
- Human resource, labor relations, or employee relations director, assistant director, manager or assistant manager of any local government agency or water management district (whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties.)
- Judge or justice of the Florida Supreme Court, district court of appeal, circuit court and county court
- Judicial or quasi-judicial officer (general and special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, and child support enforcement hearing officer)(By signature below, it is certified that the person made "reasonable efforts to protect such information from being accessible through other means available to the public.")
- Juvenile probation officer, juvenile probation supervisor, detention superintendent, assistant detention superintendent, senior juvenile detention officer, juvenile detention officer supervisor, juvenile detention officer, house parent I and II, house parent supervisor, group treatment leader, group treatment leader supervisor, rehabilitation therapist, and social services counselor of the Dept. of Juvenile Justice
- Law enforcement personnel including correctional officers and correctional probation officers
- Prosecutor (state attorney, assistant state attorney, statewide prosecutor, assistant statewide prosecutor)
- Public defenders and criminal conflict and civil regional counsel (includes assistant public defenders, assistant criminal conflict and assistant civil regional counsel)
- U.S. attorney or assistant attorney, U.S. appellate judge, U.S. district court judge and U.S. magistrate (By signature below, it is certified that the person made "reasonable efforts to protect information from being accessible through other means available to the public.")
- Victim *of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery or domestic violence. (Attach official verification that crime occurred.) 5-year exemption. Contact Attorney General's Office (850-414-3990) about eligibility for Address Confidentiality Program ((s. 741.465, Fla. Stat.))
- Other (list applicable statute): _____

Printed Name: _____ Date of Birth _____

Last 4 digits of SSN or Fla DL #: _____

(This field is optional but may help to identify your records among other similarly named persons).

Residence Address (City, State, Zip): _____

Signature _____ Date _____

If request is submitted instead by the person's employing agency, complete the following:

Agency: _____ Name/title: _____

Signature: _____ Date _____

To request an exemption for your spouse's or child's name, address, photo, and name and location of work, school or day care facility, please submit a separate sheet with the name, date of birth, and relationship. Although optional, the Florida driver's license number of your spouse or child(ren) or the last 4 digits of his/her/their social security number may be provided to better identify records. *Florida law does not make this exemption applicable to the spouse or child of a donor or victim.

ATTACHMENT B

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Current User:

Personal Info

Employee ID #: JANE B DOE

Title: 72001888 - ADMINISTRATIVE ASSISTANT II - SES **Agency:** DMS - Management Svcs

Personal Info->Overview

	Effective Date	End Date	Last Name	First Name	Middle Name	Restricted Employee	Sworn	Publish Nickname
<input checked="" type="checkbox"/>	06/01/2011	12/31/9999	DOE	JANE	B	X		
<input type="checkbox"/>	08/12/2005	05/31/2011	DOE	JANE	B			
<input type="checkbox"/>	07/16/1948	08/11/2005	DOE	JANE	B			

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Personal Info->Details

ATTACHMENT C

Florida law protects certain personal information for some positions and employees who fill those positions. For the purposes of the Justice Administrative Commission (JAC), the majority of employees entitled to have certain information exempted from public records requests are designated attorneys, sworn or certified law enforcement officers, and the spouses and children of designated employees. The exemptions can be found in s. 119.071(4), F.S. There is no statutory exemption from public records for an employee's salary.

Depending on whether you are an employee entitled to an exemption, or the spouse or child of someone entitled to an exemption, the following People First data may be exempt from a public records request:

- home address
- date of birth
- telephone number(s)
- work location address
- photographs
- names and locations of schools and day care facilities

What information is protected is dependent on the statutory exemption under which the employee falls. By completing the attached questionnaire, you can determine if any of the exemptions apply to you. Please complete, sign and date, and return the form to your Human Resources Director for processing.

Justice Administrative Commission Employee Privacy Indicator Questionnaire

A response is required from all JAC employees. Please answer each question by placing an 'X' in the YES or NO column.

	Question	Yes	No
1	Are you an active or former sworn law enforcement employee, including a correctional officer or a correctional probation officer?		
	Are you the spouse or child of the above?		
2	Are you an active or former state attorney, assistant state attorney, statewide prosecutor, assistant statewide prosecutor, public defender, assistant public defender, criminal conflict and civil regional counsel, or assistant criminal conflict and civil regional counsel?		
	Are you the spouse or child of the above?		
3	Are you a former employee of the Department of Health whose duties are to support the investigation of child abuse or neglect?		
	Are you the spouse or child of the above?		
4	Are you a former employee of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement?		
	Are you the spouse or child of the above?		
5	Are you a firefighter certified in compliance with s. 633.35, F.S.?		
	Are you the spouse or child of the above?		
6	Are you a former justice of the Supreme Court, district court of appeal judge, circuit court judge, or county court judge?		
	Are you the spouse or child of the above?		
7	Are you a former employee of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities?		
	Are you the spouse or child of the above?		
8	Are you an active or former human resource, labor relations, or employee relations director, assistant director, manager, or assistant manager of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties?		
	Are you the spouse or child of the above?		
9	Are you a former United States attorney or assistant United States attorney?		
	Are you the spouse or child of the above?		
10	Are you a former judge of United States Courts of Appeal, United States district judge, or United States magistrate judge?		
	Are you the spouse or child of the above?		
11	Are you a former code enforcement officer?		
	Are you the spouse or child of the above?		
12	Are you an active or former guardian ad litem, as defined in s. 39.820, F.S.?		
	Are you the spouse or child of the above?		
13	Are you a former juvenile probation officer, juvenile probation supervisor, detention superintendent, assistant detention superintendent, senior juvenile detention officer, juvenile detention officer supervisor, juvenile detention officer, house parent I or II, house parent supervisor, group treatment leader, group treatment leader supervisor, rehabilitation therapist, or social services counselor of the Department of Juvenile Justice?		
	Are you the spouse or child of the above?		

If you answered YES to one of the above questions but you want your information published anyway, sign your name here:

I certify the above information is true and correct to the best of my knowledge.

Print Your Name: _____

Sign Your Name: _____ Date: _____