



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, Fl 32301

www.floridafaf.org

14 January 2012

Mr. John Landregan, President
Nassau Humane Society
PO Box 16090
Fernandina Beach, FL 32035

Dear Mr. Landregan:

Karen Smith has contacted the First Amendment Foundation expressing concerns regarding Nassau Humane Society's response to her recent public records requests. Ms. Smith requested budget information for the last three fiscal years and adoption numbers including yearly data on the numbers of dogs and cats adopted, transferred to another shelter, or returned to their owners. She was told by NHS that her public record request had to be made to the City of Fernandina Beach.

Article I, section 24(a), Florida Constitution, guarantees "[e]very person . . . the right to inspect or copy any public record made or received in connection with the official business" of any public agency, "or persons acting on their behalf . . ." The word "agency" is defined in Florida's public records law as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, . . . and any other public or *private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.*" Section 119.011(2), F.S. (emphasis added).

Thus, NHS, a private organization, will be subject to Florida's public records law when a government entity has delegated to NHS its authority to perform some governmental function – in this case, animal control and rescue services. *See Putnam County Humane Society, Inc. v. Woodward*, 740 So. 2d 1238 (Fla. 5th DCA 1999) and AGOs 00-03; 07-27. In *Putnam County*, the Putnam County Humane Society was required to comply with the public records law because it was acting on behalf of a county government. *See Putnam County Humane Society*, 740 So. 2d at 1239 - 1240. The court noted that Florida's animal disposition statutes in chapter 828 gave the society the authority to act on behalf of the government when performing its functions. *Id.* The court's opinion emphasized that a humane society must abide by Florida's public records law when it performs governmental-type powers on behalf of a government entity. *Id.* at 1239 - 1240.

Like the Putnam County Humane Society, NHS, through its contractual arrangement with the City of Fernandina Beach to provide animal control services, is subject to Florida's public records law. Fernandina Beach, pursuant to its valid authority under section 828.03(2), granted NHS broad powers in the realm of animal rescue operations. Additionally, NHS performs these operations by leasing a city-owned vehicle and operating the city-owned animal rescue facility. Therefore, there is little doubt that NHS is "acting on behalf of" the City in providing animal control and rescue services.

First Amendment Foundation
14 January 2013/Page 2.

Furthermore, section 119.07(1)(a), F.S., stipulates that “*every person* who has custody of a public record” must allow that record to be inspected or copied “by any person desiring to do so, at any reasonable time, [and] under reasonable conditions” The law also requires that NHS respond to Ms. Smith’s request promptly and in good faith and to then produce the requested records for inspection or copying within a reasonable period of time. The Florida Supreme Court has stated that the only permissible delay in producing the requested records “is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.” *See* s. 119.07(1)(c), F.S., and *Tribune Company v. Cannella*, 458 So. 2f 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985).

We ask that the Nassau Humane Society reconsider its response to Ms. Smith’s public records request and provide her with the records she has requested as required by the public records law. Additionally, because of the contractual arrangement between NHS and the City of Fernandina Beach, we would suggest that the City ensure that NHS complies with the requirements of the law.

We greatly appreciate your attention to our concerns. Should you have any questions or need additional information or clarification, please don’t hesitate to contact me.

Sincerely,

Barbara A. Petersen

Barbara A. Petersen, President

Cc: Randy Carvalho, NHS Executive Director
Gregg Balzer, Shelter Director
Kim Elliott-Briley, Deputy City Clerk of Fernandina Beach
Tammi E. Bach, City Attorney, City of Fernandina Beach
Jon Kaney, General Counsel, First Amendment Foundation