



First Amendment Foundation

Protecting Your Right to Know for 30 Years!

23 December 2014

BOARD OF TRUSTEES

DAVE WILSON, CHAIRMAN

Senior Editor/Administration
The Miami Herald

BOB SHAW, VICE CHAIRMAN

Retired Editor

MIKE VASILINDA, SECRETARY & TREASURER

President

Capitol News Service

JON KANEY, GENERAL COUNSEL

Kaney & Olivari

DAN AUTREY

Publisher & President
Tampa Bay Newspapers

DICK BATCHELOR

Founder and President
Dick Batchelor Management Group, Inc.

BRIAN CROWLEY

Principal

Immediacy Public Relations

MIKE DEESON

Senior Reporter
WTSP-TV

FRANK DENTON

Editor

Florida Times-Union

ROSEMARY GOUDREAU

Editorial Page Editor
SunSentinel

CAROL JEAN LOCICERO

Thomas & LoCicero

SAMUEL MORLEY

General Counsel
Florida Press Association

TIM NICKENS

Editor of Editorials
Tampa Bay Times

PATSY PALMER

D'Alemberte & Palmer, PLLC

PATRICK RICE

Editor

Daytona Beach News-Journal

DEAN RIDINGS

President & CEO
Intersect Media Solutions

APRIL SALTER

President & Chief Operating Officer
Salter Mitchell

CRAIG SANDLER

General Manager
Affiliated News Services

PETE WEITZEL

Director Emeritus

William R. Mabile, III
Andrews, Crabtree, Knox & Andrews, LLP
1558 Village Square Boulevard
Suite 1
Tallahassee, FL 32309

Dear Mr. Mabile:

We have discussed your response with Mr. Hugh Taylor, and he refutes the allegations that he compromised Miss Mackie's privacy or that his behavior prevented Ms. Mackie from accepting his request. Mr. Taylor maintains the video recording was made in a public space where there is no expectation of privacy. In addition, even in light of Mr. Taylor's persistent behavior, Miss Mackie was obligated under Florida law to respond and comply with his public record request .

Florida law permits video recording – including audio recording – of oral communication when the parties do not have a reasonable expectation of privacy in the conversation. Section 934.02(2), Florida Statutes. The “oral communication” protected under statute is that which is uttered by a person exhibiting an expectation that such communication is not subject to interception *under circumstances justifying such expectation. Id.* (emphasis added). It follows that when two people are engaged in conversation in a public place where they might reasonably be overheard, the participants do not have a reasonable expectation of privacy in the conversation. Ms. Mackie's un-enclosed office area is located in a public building, just inside the main entrance and in open view of and accessible to everyone entering and exiting the building. In addition, your response claims Ms. Mackie asked a student to stay close and observe the interaction, which further erodes any expectation of privacy. Given the public building in which Ms. Mackie works and that her workspace can be seen and accessed by anyone in the lobby, Ms. Mackie did not have a cognizable expectation of privacy in her conversation with Mr. Taylor. As such, Ms. Mackie's consent was not required for Mr. Taylor to videotape his public records request.

Your response admitted that Miss Mackie “could have accepted” Mr. Taylor's public records request “but for” his behavior. Whether a request will be

“accepted,” however, is not subject to the impulse or discretion of a public official. Florida’s public records law demands a broad right of access that cannot be thwarted at the agency’s discretion. As the Court has stated, “[e]ven though a public agency may believe that a person or group are fanatics, harassers, or are extremely annoying, the public records are available to all.” *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991). As to the assertion Mr. Taylor used a public records request to mask his interest in a purchase order, “[t]he motivation of the person seeking the records does not impact the person’s right to see them under the Public Records Act.” *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). As a consequence to these legal guarantees, “public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws.” *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996).

Florida’s Public Records Law is impervious to personal judgment calls and requires Ms. Mackie to fulfill her statutory obligation, no matter the requestor. The law and the courts affirm that *everyone* has a constitutional right of access.

We again urge the College to adjust its policies to conform to the requirements of the Public Records Law.

Sincerely,



Barbara A. Petersen, President