



OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
*Attorney General
State of Florida*

September 5, 1995

The Honorable Stan Bainter
Representative, District 25
301 West Ward Avenue
Eustis, Florida 32726-4024

Dear Representative Bainter:

Thank you for considering this office as a source for assistance in petitioning the Governor to appoint three new supervisors to the Deer Island Community Development District. Attorney General Butterworth has asked me to respond to your letter.

According to your letter, one of the five members of the district's board of supervisors had resigned and two other members could not be located. Section 190.006(4), Florida Statutes, provides that any vacancy shall be filled by the remaining members. However, as the remaining members lacked a quorum, the board could not proceed to fill the vacancy. In light of this situation, you asked that this office join in your request that the Governor to appoint three new members.

This office has contacted the Governor's office on this matter and has been advised by that office that one of the missing members of the board has been located. This office was further informed that the board of supervisors, now having a quorum, held a meeting to conduct district business and is now able to fill the vacancy.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tgk



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September 5, 1995

The Honorable Stan Bainter
Representative, District 25
301 West Ward Avenue
Eustis, Florida 32726-4024

Dear Representative Bainter:

Thank you for considering this office as a source for assistance as to whether a public agency may place information in a personnel file after the employee has left the employment of the agency. Attorney General Butterworth has asked me to respond to your letter.

The courts have held that unless the Legislature has expressly exempted an agency's personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection under section 119.07(1), Florida Statutes.¹ This office has stated that an agency may not agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file.² The Department of Health and Rehabilitative Services has advised you that under its regulations, information received or generated by the department that concerns or relates to an employee's job or state employment must be placed in the employee's personnel file.

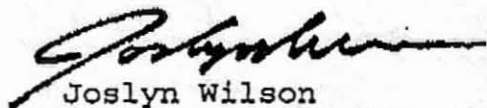
I am not aware of any prohibition against an agency placing information that it receives regarding its former employee in its personnel file when such information relates to the employee's job or employment. Whether the information in question actually relates to the employee's job or employment with the agency presents a question of fact or mixed question of fact and law which this office cannot resolve. The practice of a public agency placing any written requests for verification of a former employee's employment in that individual personnel file, however, is not uncommon.³ Moreover, the Department of Health and Rehabilitative Services has advised you that under their regulations, the employee has the right to respond in writing to any derogatory material placed in the agency's personnel file and that such response will be attached to the derogatory item in the official personnel file.⁴

The Honorable Stan Bainter
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Public agencies, however, should be aware that a court has held that an agency must provide an employee with an opportunity for a post termination name clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published.⁵

I trust that the above informal advisory comments may be of some assistance.

Sincerely,



Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tgk

¹ See, e.g., Michel v. Douglas, 464 So. 2d 545 (Fla. 1985).

² Attorney General Opinion 94-54.

³ I have been advised that the personnel office of the Attorney General's Office routinely places such inquiries in the employee's personnel file.

⁴ See, Rule 60K-10.003(3), F.A.C., stating that a career service employee, "on request, shall have the right to review his or her personnel file. On written request of an employee, a person so designated by the employee, shall have the right to review the employee's personnel file."

⁵ Buxton v. City of Plant City, Florida, 871 F. 2d 1037 (11th Cir. 1989). See also, Garcia v. Walder Electronics, Inc., 563 So. 2d 723 (Fla. 3d DCA 1990), review denied, 576 So. 2d 287 (Fla. 1990), noting that a public employer has an affirmative duty to inform a discharged employee of his right to seek a post termination name clearing hearing.