

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-687

REP. LARRY METZ, REP. THOMAS
J. LEEK, REP. DAVID
RICHARDSON, REP. LARRY
AHERN, REP. JASON BRODEUR,
REP. CORD BYRD, REP. ROBERT
CORTES, REP. KIMBERLY
DANIELS, REP. TRACIE DAVIS,
REP. JASON FISCHER, REP. JULIO
GONZALEZ, REP. AMY MERCADO,
REP. DANIEL PEREZ, REP.
KATHLEEN PETERS, REP. SHARON
PRITCHETT, REP. JAKE RABURN,
REP. EMILY SLOSBERG, and REP.
JENNIFER MAE SULLIVAN,
TOGETHER CONSTITUTING THE
HOUSE PUBLIC INTEGRITY AND
ETHICS COMMITTEE; and
SPEAKER RICHARD CORCORAN,

Appellants,

v.

MAT MEDIA, LLC, and CHARLES
“PAT” ROBERTS,

Appellees.

On appeal from the Circuit Court for Leon County.
Karen Gievers, Judge.

February 7, 2020

RAY, C.J.

As part of its investigation into the integrity of certain VISIT FLORIDA contracts and the quality of their procurement, the Florida House of Representatives Public Integrity and Ethics Committee issued subpoenas to MAT Media, LLC, and Charles “Pat” Roberts for records related to MAT Media’s publicly funded contracts with VISIT FLORIDA for production of *Emeril’s Florida* television programming. For their part, MAT Media and Mr. Roberts asserted that the subpoenas exceeded the scope of a legitimate legislative investigation, sought disclosure of trade secret information, and invaded their privacy interests.

At issue in this appeal is the trial court’s refusal to enforce the subpoenas to the extent that they sought MAT Media’s records showing its actual costs to produce *Emeril’s Florida*. Because the request falls squarely within a legitimate legislative investigation and there is no constitutional impediment to the release of the records, we reverse the trial court’s order quashing this portion of the subpoenas and remand for further proceedings.

Background

MAT Media is a single-member Florida limited liability company managed and controlled by Mr. Roberts. VISIT FLORIDA is the trade name for the Florida Tourism Industry Marketing Corporation, a public-private nonprofit corporation created by statute to serve as a direct-support organization for Enterprise Florida, Inc. See § 288.1226, Fla. Stat. Enterprise Florida is a nonprofit corporation that serves as the economic development organization for the state. § 288.901, Fla. Stat. By law, Enterprise Florida must contract with VISIT FLORIDA “to execute tourism promotion and marketing services, functions, and programs for the state.” § 288.923(3), Fla. Stat.

Beginning in 2012, VISIT FLORIDA entered into a series of no-bid contracts with MAT Media for MAT Media to create and produce original television programming hosted by Emeril Lagasse and featuring Florida locations and cuisine (“*Emeril’s*

Florida”). The contracts also called for MAT Media to create and produce ancillary products in support of *Emeril’s Florida*.

The contracts were “deliverable contracts,” involving the expenditure of public funds in return for defined deliverables of products and services. While MAT Media did not have to disclose its actual costs and expenses associated with the deliverables in its invoices to VISIT FLORIDA, MAT Media agreed “to maintain journals, ledgers, books and other records in good order and in sufficient detail to allow audit and post-audit activities required by law with respect to VISIT FLORIDA activities.” VISIT FLORIDA did not ask for any audit of MAT Media under the contracts, and there was no allegation that MAT Media breached the contracts in any way.

Over the course of five seasons, MAT Media received more than \$10 million in public funds under its contracts with VISIT FLORIDA. It also received additional public dollars in sponsorships by local tourism development councils and visitor convention bureaus, plus advertising revenue realized on the programming purchased by VISIT FLORIDA. Further, MAT Media retained ownership and copyright of the products it created for VISIT FLORIDA and could resell the products for additional compensation.

At the request of the Speaker of the Florida House of Representatives, the Public Integrity & Ethics Committee began “investigating certain VISIT FLORIDA television production contracts to discover the integrity of such contracts and the quality of their procurement.” During this same general time, the Committee was also considering and ultimately advanced a bill to establish a “Florida Accountability Office” to promote integrity in government and identify, investigate, and eliminate fraud, waste, abuse, mismanagement, and misconduct. Relating to the state agency procurement process, the bill called for the disclosure of good-faith estimates of gross profit from potential contractors in non-competitive procurements and required agencies to make written determinations of whether those estimates were excessive.

The Committee unanimously approved issuance of subpoenas duces tecum to MAT Media and Mr. Roberts as part of its investigation. In relevant part, the subpoenas asked for “[a]ll

journals, ledgers, books, and records concerning the production and airing of *Emeril's Florida* for years 2012-2017.”¹ The Speaker approved the subpoenas, and they were signed and issued by the Committee’s chair.²

In response to the subpoenas, MAT Media and Mr. Roberts sued the Speaker and the members of the Committee (collectively, the “House”) for injunctive and declaratory relief to determine their duty to respond to the subpoenas. They contended the subpoenas exceeded the scope of a legitimate legislative investigation, sought disclosure of trade secret information, and invaded Mr. Roberts’ right to privacy. The House in turn sued MAT Media and Mr. Roberts for judicial enforcement of the subpoenas under section 11.143(4)(b), Florida Statutes.³ The House

¹ During oral argument in this case, House counsel represented to the Court that the only request the House is pursuing in this appeal is paragraph 18 of the subpoenas directed to both MAT Media and Mr. Roberts. That request seeks “[a]ll journals, ledgers, books, and records concerning the production and airing of *Emeril's Florida* for years 2012-2017.” More to the point, the House is seeking records relating to MAT Media’s expenses or actual costs incurred as part of its performance under its public contracts with VISIT FLORIDA. Our opinion is thus limited accordingly.

² The Florida House of Representatives later approved identical subpoenas to MAT Media and Mr. Roberts during the legislative session.

³ Section 11.143(4)(b), Florida Statutes, authorizes judicial enforcement of a legislative subpoena and provides:

If a witness fails to respond to the lawful subpoena of any such committee at a time when the Legislature is not in session or, having responded, fails to answer all lawful inquiries or to turn over evidence that has been subpoenaed, such committee may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of the complaint and shall direct the

contended that it was entitled to the requested documents as part of its continuing investigation into the use of public funds for tourism marketing and its consideration of policy changes to inject more transparency and accountability into the procurement process. The cases were consolidated, and the trial court held an evidentiary hearing on the legislative request for MAT Media's financial records at issue in this appeal.

Two witnesses testified at the evidentiary hearing over a general objection from the House regarding the lack of relevancy. First, the former chief marketing officer of VISIT FLORIDA testified about the valuation of the *Emeril's Florida* contracts. He referred to the deliverables under those contracts as "evergreen products" because VISIT FLORIDA could repurpose them and use them in perpetuity. He explained that a product like *Emeril's Florida* has a long shelf life, so it is hard to determine the actual value. He and other representatives of VISIT FLORIDA generally negotiated the fair market value of the contracts with Mr. Roberts based on their collective experience and expertise. He said they took their responsibilities seriously because they were dealing with taxpayer dollars. VISIT FLORIDA focused on the value of the content, not how much profit MAT Media would make under the contracts. As summarized by the trial court, "[h]e did not ask to look at Mr. Roberts[] books to see what his costs were, he knew from his own experience what would cause costs to go up. It was a little bit of a game, but in the end he felt that they got fair value."

Next, the court heard from the bookkeeper for MAT Media and Mr. Roberts. The bookkeeper testified that MAT Media has its own set of financial records and ledgers, apart from Mr. Roberts' personal financial information. MAT Media does not file its own tax return; instead, its business revenue and expenses appear on Schedule C of Mr. Roberts' personal tax return. As part of his

witness to respond to all lawful questions and to produce all documentary evidence in the possession of the witness which is lawfully demanded. The failure of a witness to comply with such order of the court constitutes a direct and criminal contempt of court, and the court shall punish the witness accordingly.

duties, the bookkeeper would make deposits and issue checks on behalf of MAT Media to pay vendor invoices. He would record all of MAT Media's expenses for its various projects using accounting software. Hard copies of the invoices were maintained in Mr. Roberts' office.

After an *in-camera* review of the requested records, the trial court determined that the records would not "shed light on the back and forth negotiations that led to the Visit Florida/Mat Media contracts." It found that those items were "simply not germane or pertinent to the investigation, nor does the House's investigation power outweigh the privacy protection of Mr. Roberts and his company's information." The court reasoned that "[r]equiring production of the records would be approval of the very sort of governmental intrusion prohibited by Article I, section 23, Florida's Right to Privacy." Based on these findings, the trial court quashed certain portions of the subpoenas, including the one at issue in this appeal.

Before us, the House contends that the trial court's order should be reversed, and MAT Media and Mr. Roberts should be ordered on remand to produce MAT Media's financial records reflecting its *Emeril's Florida* costs, subject to appropriate protections for any trade secrets. Because this case presents questions of law arising from undisputed facts, the standard of review is *de novo*. *Aills v. Boemi*, 29 So. 3d 1105, 1008 (Fla. 2010).

Legal Principles

The State's legislative power rests exclusively with the Legislature. *See* Art. III, § 1, Fla. Const. Inherent in the plenary power to legislate is the power to investigate. *See* Art. III, § 5, Fla. Const.; § 11.143(3), Fla. Stat. "Once a valid legislative objective is established then the power of inquiry with effective process to obtain it is an essential concomitant of the legislative authority to act." *Gibson v. Fla. Legislative Investigation Comm'n.*, 108 So. 2d 729, 737 (Fla. 1958).

The Legislature's power to investigate is necessarily broad. "It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," "[i]t includes surveys of defects in our social, economic or political system" for

the purpose of seeking a legislative remedy for them, and “[i]t comprehends probes into [governmental] departments . . . to expose corruption, inefficiency or waste.” *Hagaman v. Andrews*, 232 So. 2d 1, 6 (Fla. 1970) (quoting *Watkins v. United States*, 354 U.S. 178, 187 (1957)). In sum, the scope of legislative inquiry is “as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.” *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

Even confidential information is not off limits in a legitimate legislative inquiry, as Florida law provides that

[i]n order to carry out its duties . . . [each legislative committee], whenever required, may also compel by subpoena duces tecum the production of any books, letters, or other documentary evidence, *including any confidential information*, it desires to examine in reference to any matter before it.

§ 11.143(3)(a)-(b), Fla. Stat. (emphasis added).

Yet broad as it is, the legislative power to investigate is not unlimited. “Moderation, restraint and caution should be the rule in exercising it. If not circumscribed by reasonable limitations it is one which could lead to abuses with attendant encroachments on individual liberties.” *Gibson*, 108 So. 2d at 737. It should never be used to “hunt witches.” *Id.*

To begin with, there must be a legitimate legislative purpose for the investigation. For example, the Legislature “cannot inquire into matters which are within the exclusive province of one of the other branches.” *Barenblatt*, 360 U.S. at 111-12. Nor can the power of inquiry “extend to an area in which [the Legislature] is forbidden to legislate.” *Quinn v. United States*, 349 U.S. 155, 161 (1955). The information sought by the inquiry must also be “pertinent” or “reasonably relevant” to the legislative purpose of the investigation. *McPhaul v. United States*, 364 U.S. 372, 381-82 (1960); *Hagaman*, 232 So. 2d at 7-8; *Gibson*, 108 So. 2d at 740. And finally, the Legislature may not infringe on an individual’s constitutionally protected rights. *See Watkins*, 354 U.S. at 188 (“The Bill of Rights is applicable to investigations as to all forms of governmental action.”).

Even so, the legitimacy of a legislative inquiry is not “to be defined by what it produces.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 509 (1975). As the United States Supreme Court cautioned,

[t]he very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.

Id. Courts also cannot look to the motives alleged to have prompted the legislative inquiry to determine its validity. “So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.” *Barenblatt*, 360 U.S. at 132.

Quite simply, courts may not second-guess the legitimacy of a legislative inquiry so long as it is not “plainly incompetent or irrelevant to any lawful purpose [of the Legislature] in the discharge of [its] duties.” *McPhaul*, 364 U.S. at 381 (second alteration in original) (quoting *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)). To do so would entangle the judicial branch in matters involving the exclusive prerogative of another branch in violation of Florida’s strict separation of powers requirement. *See* Art. II, § 3, Fla. Const.

Analysis

MAT Media and Mr. Roberts do not question the authority of the House to investigate the integrity of MAT Media’s publicly funded contracts with VISIT FLORIDA and the quality of their procurement. Neither did the trial court. Rather, based on its *in-camera* review of the records responsive to the legislative subpoena, the trial court determined that the records would not assist the House with its investigation and that disclosure would improperly invade the privacy interests of MAT Media and Mr. Roberts. In reaching this result, however, the trial court applied an overly narrow relevancy standard and went too far by basing its decision on its *in-camera* review of the substance of the records responsive to the request.

Mindful that the Legislature’s power to investigate encompasses “inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes,” *Watkins*, 354 U.S. at 187, we cannot say that the request for records showing MAT Media’s costs tied to the production of *Emeril’s Florida* is wholly unrelated to a legitimate legislative investigation. Just because VISIT FLORIDA did not consider MAT Media’s actual costs or profit in valuing its contracts does not foreclose the House from seeking that information, as it may well inform legislative decision-making about whether policy changes are needed to strengthen the integrity of the procurement process. “A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). The responsive documents may shed light on whether the taxpayers could have secured a better deal with more transparency or if there was an actual or apparent conflict of interest clouding the procurement process. Or, the documents may ultimately lead to a dead end. But the value of the information obtained is for the House to decide, not the courts. *Eastland*, 421 U.S. at 509 (“The wisdom of congressional approach or methodology is not open to judicial veto.”).

We also reject the trial court’s conclusion that Florida’s constitutional-right-to-privacy provision protects MAT Media’s records from disclosure. As an initial matter, MAT Media does not have a constitutionally guaranteed right to privacy. *See* Art. I, § 23, Fla. Const. (“Right of privacy.—Every *natural person* has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.”) (emphasis added); *see also Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) (noting that the “constitutional right to privacy . . . is a personal one, inuring solely to individuals”). And the House has made clear that it does not seek any of Mr. Roberts’ personal information. Based on the testimony below, MAT Media has its own set of financial records and ledgers, apart from Mr. Roberts’ personal financial information.

More broadly, given that MAT Media was required by contract to maintain “journals, ledgers, books and other records in good

order and in sufficient detail to allow audit and post-audit activities,” we are not persuaded that any purported privacy interests in these records provided a valid basis to resist the legislative request. That this information may be considered “confidential” by MAT Media and Mr. Roberts does not render it off limits in a legitimate legislative inquiry. *See* § 11.143(3)(a)-(b), Fla. Stat. Whether the records should be produced under protection for trade secret information is a separate matter, which must be first addressed by the trial court.

We therefore reverse the decision below consistent with this opinion and remand for further proceedings.

WOLF and OSTERHAUS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

J. Michael Maida, Deputy General Counsel, and Donald Rubottom, Staff Director for Public Ethics and Integrity Committee, Florida House of Representatives, Tallahassee, for Appellants.

Mark Herron and S. Denay Brown of Messer Caparello, P.A., Tallahassee, and R. Timothy Jansen and Adam J. Komisar of Jansen & Davis, P.A., Tallahassee, for Appellees.