

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CABLE NEWS NETWORK, INC.;
MIAMI HERALD MEDIA COMPANY;
and SUN-SENTINEL COMPANY, LLC,

CASE NO: 18-004429 CACE (09)
JUDGE: JEFFREY R. LEVENSON

Petitioners,

vs.

BROWARD COUNTY SHERIFF'S OFFICE;
SCOTT ISRAEL, in his official capacity as
Broward County Sheriff; SCHOOL BOARD OF
BROWARD COUNTY; and ROBERT W. RUNCIE,
in his official capacity as Superintendent of Schools,
Broward County,

Respondents.



**ORDER ON PETITIONERS' AMENDED PETITION FOR ACCESS TO VIDEO
RECORDINGS FROM THE EXTERIOR CAMERAS OF MARJORY STONEMAN
DOUGLAS HIGH SCHOOL**

THIS CAUSE came before the court on Petitioners' Amended Petition for Access to Video Recordings from the Exterior Cameras of Marjory Stoneman Douglas High School. The Court, having considered the amended petition and responses, having heard arguments from counsel, having heard live testimony¹ and received evidence, having conducted an *in-camera* review, and being otherwise duly advised in the premises, rules as follows:

On March 1, 2018, petitioners, Cable News Network, Inc.; Miami Herald Media Company; and Sun-Sentinel Company, LLC (the "Petitioners"), filed their Amended Petition for Access to Video Recordings from the Exterior Cameras of Marjory Stoneman Douglas High School (the "Amended Petition"), seeking an immediate hearing pursuant to section 119.11(1), Florida

¹ The Court heard live testimony from: (1) Captain Joseph Achilarré; (2) Captain Edward Sileo; (3) Anthony Hunter; and (4) Maximo Rosario.

Statutes. On March 2, 2018, non-parties, ALM Media, LLC; CBS Broadcasting, Inc.; (including CBS Miami WFOR-TV); Charter Communications Operating, LLC; Fox Television Stations, LLC (and its affiliates New World Communications of Tampa, Inc., Oregon Television, Inc., and UTV of Orlando, Inc.); Graham Media Group, Inc., NBCUniversal Media, LLC; Scripps Media, Inc. (and affiliates WPTV, WFTS and WFTX); and Univision Communications, Inc.; WFTV, LLC; and WPLG, Inc. (the “Media Intervenors”), filed their Unopposed Motion to Intervene by the Media. On March 5, 2018, respondents, Broward County Sheriff’s Office and Sheriff Scott Israel (collectively “BSO”), filed a response in opposition to the Amended Petition. Also, on March 5, 2018, the State Attorney’s Office (“SAO”) filed its Motion to Intervene together with a response in opposition to the Amended Petition. On March 6, 2018, BSO filed a response to SAO’s Motion to Intervene. On March 7, 2018, Petitioners filed their Memorandum of Law in Support of the Amended Petition. Also, on March 7, 2018, respondents, School Board of Broward County and Superintendent Robert W. Runcie (collectively “School Board”), filed a response in opposition to the Amended Petition. An evidentiary hearing was held before this Court on March 8, 2018.² This Court reserved ruling on the Amended Petition pending an *in-camera* review. BSO submitted the video recordings from the exterior camera for this Court’s *in-camera* inspection, which the Court has now reviewed.

It is undisputed that the video recordings from the exterior cameras of Marjory Stoneman Douglas High School are public records pursuant to section 119.011(12), Florida Statutes. The issue before this Court is whether the video recordings from the exterior cameras of Marjory Stoneman Douglas High School submitted to this Court for an *in-camera* inspection are exempt from disclosure pursuant to any of the following statutory exemptions: (1) section 119.071(2),

² At the hearing, this Court granted the Media Intervenors’ and SAO’s Motions to Intervene.

Florida Statutes; (2) section 119.071(3), Florida Statutes; (3) section 281.301(1), Florida Statutes; and (4) section 112.533(2), Florida Statutes.

The law is well settled that

[t]he general purpose of the Florida Public Records Act is to open public records so that Florida's citizens can discover the actions of their government. *Browning v. Walton*, 351 So. 2d 380, 381 (Fla. 4th DCA 1977). Further, Section 119.01(1), Florida Statutes (1993), expressly provides that "it is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Given this underlying policy, the Act is to be construed liberally in favor of openness, and all exemptions from disclosure are to be construed narrowly and limited to their designated purpose. *See Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986).

City of Riviera Beach v. Barfield, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994). Furthermore, "[a] governmental agency claiming the benefit of these exemptions has the burden of proving its entitlement to it." *Barfield v. City of Ft. Lauderdale Police Dept.*, 639 So. 2d 1012, 1015 (Fla. 4th DCA 1994).

First, at the hearing, BSO and SAO argued that the video recordings from the exterior cameras are exempt from disclosure pursuant to section 119.071(2)(c)(1), Florida Statutes. Section 119.071(2)(c)(1), Florida Statutes, provides that "[a]ctive criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution." Section 119.011, Florida Statutes, provides the following definitions

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

....

(d) The word "active" shall have the following meaning:

....

2. Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

§ 119.011, Fla. Stat.

After careful consideration of the testimony and evidence presented, together with this Court’s *in-camera* review of the video recordings from the exterior cameras, this Court determines that neither BSO nor SAO have met their burden in establishing that these four video recordings are “active” within the meaning of section 119.011(3)(d), Florida Statutes. Under Florida law, “[t]he criminal investigative information exemption of the Public Records Act and its predecessor, the common law police secrets rule, have always had a limited purpose-to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection.” *Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986) (internal quotation marks and citation omitted). Nothing in the record supports the position that these specific video recordings would impede an ongoing investigation. Furthermore, at the evidentiary hearing, Captain Edward Sileo of the Broward County Sheriff’s Office testified that even though an active criminal investigation as to Nikolas Cruz was ongoing, he did not believe that the disclosure of the video recordings from the exterior cameras would jeopardize the investigation. In addition, this Court notes that at the hearing, SAO further argued that the video recordings are considered “active” because they directly relate to the pending prosecution of Nikolas Cruz. However, this Court finds that SAO has failed to establish

how these specific video recordings directly relate to the pending prosecution of Nikolas Cruz. Therefore, section 119.071(2)(c)(1), Florida Statutes, does not bar the disclosure of the video recordings from the exterior cameras.

Second, at the hearing, the School Board argued that the video recordings from the exterior cameras are exempt from disclosure pursuant to sections 119.071(3)(a) and 281.301(1), Florida Statutes. The School Board asserts that disclosure of the video recordings would reveal the limitations, capabilities and vulnerabilities of the current security system. Sections 119.071(3)(a) and 281.301(1), Florida Statutes, provide that records that relate directly to or reveal information about security systems are confidential and exempt from public disclosure. Nonetheless, both 119.071(3)(a) and 281.301(1), Florida Statutes, further provide that such confidential and exempt information may be disclosed “upon a showing of good cause before a court of competent jurisdiction.”

After careful consideration of the testimony and evidence presented, together with this Court’s *in-camera* review of the video recordings from the exterior cameras, this Court finds that the video recordings minimally (if at all) reveal information relating to the security system of Marjory Stoneman Douglas High School. Notwithstanding, while this Court is sensitive to the importance of preserving a security system that keeps students and employees of the School Board safe, this Court determines that good cause exists that permits disclosure. In making this decision, this Court has balanced the public’s right to be informed regarding the perceived actions of the armed school resource officer against the potential harm to the current security system. After reviewing the video recordings, this Court finds that the potential harm to the current security system, minimal at best, is outweighed by the strong public interest in disclosure. Therefore, sections 119.071(3)(a) and 281.301(1), Florida Statutes, do not bar the disclosure of the video recordings from the exterior cameras.

Lastly, at the hearing, BSO argued that the video recordings from the exterior cameras are exempt from disclosure pursuant to section 112.533, Florida Statutes. Specifically, in its response, BSO asserts that it is conducting an active and ongoing internal affairs investigation regarding the incident, including an internal investigation into former Deputy Scot Peterson's actions and/or inactions on the date of the shooting. Section 112.533(1)(a), Florida Statutes, provides that

[e]very law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.

§ 112.533(1)(a), Fla. Stat. (emphasis added). In addition, section 112.533(2)(a), Florida Statutes, provides that

[a] complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of the complaint is confidential and exempt from the provisions of s. 119.07(1) until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint...

§ 112.533(2)(a), Fla. Stat.

After careful consideration of the testimony and evidence presented, together with this Court's *in-camera* review of the video recordings from the exterior cameras, this Court determines that section 112.533, Florida Statutes, is inapplicable. The confidential and exempt information obtained by the law enforcement agency pursuant to the investigation is for determining *whether to proceed with disciplinary action*. It is undisputed that Deputy Scot Peterson resigned prior to the conclusion of the Broward County Sheriff's Office internal affairs investigation. Therefore, the Court finds that the internal affairs investigation ceased to be active at the time Deputy Scot

Peterson resigned, and therefore such information obtained during the investigation is no longer confidential and exempt from section 119.07(1), Florida Statutes.³ As argued at the hearing, the Broward County Sheriff's Office is continuing with the investigation solely to reach a conclusion. It is important to note that at the hearing, Captain Joseph Achillarre of the Broward County Sheriff's Office testified that even though an active internal affairs investigation was ongoing as to Deputy Scot Peterson, he did not believe that the disclosure of the video recordings from the exterior cameras would jeopardize the investigation. Therefore, section 112.533, Florida Statutes, does not bar the disclosure of the video recordings from the exterior cameras.

Accordingly, as the statutory exemptions do not bar the disclosure of the video recordings from the exterior cameras of Marjory Stoneman Douglas High School submitted to this Court for *in-camera* inspection, such video recordings are subject to public inspection. At the hearing, the parties agreed that redacting the identities of the students and unknown witnesses was appropriate. Therefore, this Court instructs the Broward County Sheriff's Office to produce a redacted version of the video recordings to Petitioners. The redacted version of the video recordings shall remove the identities of the students and unknown witnesses.

Accordingly, it is hereby:

ORDERED that Petitioners' Amended Petition for Access to Video Recordings from the Exterior Cameras of Marjory Stoneman Douglas High School is GRANTED.

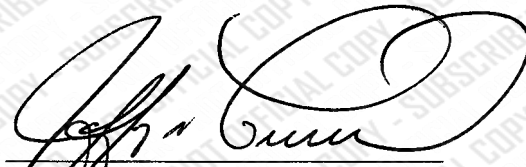
IT IS FURTHER ORDERED that this action is STAYED until 12:00 pm on Thursday, March 15, 2018, for an opportunity to appeal.

³ This Court finds Attorney General Opinion 91-73 (1991) persuasive. In opinion 91-73, the Attorney General opined that "[a]n investigation of a law enforcement officer under s. 112.533, F.S. (1990 Supp.), ceases to be active at the time the officer resigns, and the exemption provided in s. 112.533, F.S. (1990 Supp.), would no longer be applicable." Op. Att'y Gen. Fla. 91-73 (1991).

IT IS FURTHER ORDERED that should an appeal not be filed by 12:00 pm on Thursday, March 15, 2018, then Respondent, Broward County Sheriff's Office, shall provide the redacted version of the video recordings from the exterior cameras to Petitioners within twenty four (24) hours.

IT IS FURTHER ORDERED that the court retains jurisdiction to award attorney's fees and costs as to entitlement and amount.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 12th day of March, 2018.



JEFFREY R. LEVENSON
CIRCUIT COURT JUDGE

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