

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.) DOCKET NO. 920260-TL)
In re: Investigation into the integrity of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S repair service activities and reports.) DOCKET NO. 910163-TL)
In re: Investigation into SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S compliance with Rule 25-4.110(2), F.A.C, Rebates.) DOCKET NO. 910727-TL)
In re: Show cause proceeding against SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for misbilling customers.) DOCKET NO. 900960-TL)
ORDER NO. PSC-93-0905-CFO-TL)
ISSUED: June 15, 1993)

**ORDER DENYING SOUTHERN BELL'S MOTION FOR
CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF DOCUMENT NO. 10384-92
(DOCKET NO. 910163-TL)**

On September 9, 1992, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Motion for Confidential Treatment and Permanent Protective Order for portions of the deposition transcripts of Southern Bell employees Cherie Calvert, Raymond Kummer, Silvia Lom-Ajan, Lynn Lytle, Gary Maser, Donald Porter, James Ramsey, Barbara Roberts, Lynn Schmoll and Paul White. (Southern Bell's motion). The deposition transcripts, with the information for which the Company is requesting confidential treatment highlighted, were filed by Southern Bell with the Commission's Division of Records and Reporting on September 9, 1992, as Attachment "A" to Southern Bell's motion. The deposition transcripts collectively were assigned Document No. 10384-92 by the Division of Records and Reporting. On September 17, 1992, the Office of Public Counsel

¹ Public Counsel took the depositions of these Southern Bell employees on July 27, 28, 29, 30 and 31, 1992.

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(Public Counsel) filed its Response to Southern Bell's Request for Confidential Classification and Motion for Permanent Protective Order (Public Counsel's response).

During the depositions of the Southern Bell employees, Public Counsel asked whether each employee had been disciplined by the Company and, if so, further questioned the deponent regarding who administered the discipline, the stated basis for the discipline, the type of discipline and the employee's response to the discipline. In the instant motion, the Company requests confidential classification only for the identities of those employees who indicated during their depositions that they had been disciplined by Southern Bell.

Deposition transcripts filed with the Commission are public records.² Section 119.07(1), Fla. Stat. (1991) requires the custodian of public records to permit the inspection and examination of such records by any person desiring to do so, at reasonable times, under reasonable conditions, and under the supervision of the custodian of the records. Section 119.07(3), however, provides a limited exception to the provisions of section 119.07(1) by stating that

[a]ll public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the provisions of subsection (1).

In Wait v. Florida Power & Light Co., 372 So.2d 420, 425 (Fla. 1979), quashing 353 So.2d 1265, the Florida Supreme Court directly construed section 119.07(3), (then 119.07(2)), and held that the language "provided by law" contained therein "excludes any

² Section 119.011(1) of Florida's Public Records Law defines "public records" to include

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

judicially created privilege of confidentiality and exempts from public disclosure only those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law." Southern Bell has the burden of demonstrating that the information is qualified for confidential classification.³ Consequently, deposition transcripts filed with the Commission are subject to the examination and inspection provisions of section 119.07(1) unless a specific statutory provision can be pointed to which exempts those records from disclosure.

The legislature sets forth exemptions to the disclosure requirements of Florida's Public Records Law with regard to information received by the Commission from telecommunications companies in section 364.183, Fla. Stat. (1991). Section 364.183 specifically exempts "proprietary confidential business information" from the disclosure requirements of section 119.07 when such information is received by the Commission from telecommunications companies. Section 364.183(3) defines "proprietary confidential business information" as information owned or controlled by the company, intended to be and treated by the company as private in that disclosure of the information would cause harm to the ratepayers or the company's business operations, and not disclosed unless pursuant to a statutory provision, court or administrative order or private nondisclosure agreement. Section 364.183(3) then enumerates specific categories of information which are by legislative definition "proprietary confidential business information" exempt from the disclosure requirements of section 119.07. Of significance here is the exemption found in subsection (3)(f) which provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications or responsibilities."

³ Pursuant to section 364.183 and Fla. Admin. Code Rule 25-22.006, Southern Bell has the burden of demonstrating that information is qualified for confidential classification. Rule 25-22.006 provides that Southern Bell may fulfill its burden of showing that the information is "proprietary confidential business information," as defined in section 364.183, by showing the information is one of the statutory examples set forth therein or by demonstrating disclosure of the information will cause harm to Southern Bell or its ratepayers.

In the instant motion, Southern Bell argues that the identification of employees who were disciplined is information unrelated to compensation, duties, qualifications or responsibilities and, therefore, it is "proprietary confidential business information" exempt by section 364.183(3)(f) from public disclosure. Moreover, Southern Bell contends that the information is "proprietary confidential business information" in that disclosure would harm the Company's business operations. Southern Bell argues that public disclosure of the identities of disciplined employees would be highly damaging to the reputation of the employees in the community and would result in embarrassment to the employees, which will have a chilling effect on managers' willingness to discipline employees in the future and on the company's analysis of its operations. Southern Bell contends that section 364.183 was not intended to require disclosure under these circumstances.

Public Counsel contends that the information is related to the employee's duties or responsibilities and, hence, is not exempt from disclosure by section 364.183(3)(f). Furthermore, Public Counsel argues that Southern Bell has failed to establish the harm necessary to allow proprietary confidential business treatment of the information under section 364.183(3).

In a prior ruling by the Prehearing Officer in this docket, it was held that the identities of employees who were disciplined by Southern Bell is information related to performance of the employees' jobs and, therefore, it is employee personnel information which is related to duties or responsibilities.⁴ As such, it was determined that this information is not "proprietary confidential business information" as defined by the legislature in section 364.183(3)(f) and, hence, it is information not exempt from public disclosure by that provision.⁵ Hence, the identities of the

⁴ In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports, 92 F.P.S.C. 9:470 (1992).

⁵ Id. Florida courts have addressed the issue of whether personnel files of public employees are public records. Other than certain medical records regarding public employees, and personal information concerning active or former police officers, the Florida courts have consistently held that all information contained in personnel files are public records subject to

disciplined employees found in the deposition transcripts filed with the Commission, which comprise Document No. 10384-92, are not "proprietary confidential business information" under section 364.183(3)(f).

Having concluded that the fact that an employee has been disciplined is employee personnel information related to duties or responsibilities, it appears that the information is subject to public disclosure under section 364.183(3). Section 364.183(3) provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." It follows that employee personnel information related to compensation, duties, qualifications or responsibilities is not "proprietary confidential business information" and, therefore, not exempt from public disclosure under section 364.183(3).⁶ Nonetheless, with regard to Southern Bell's contention that the information is "proprietary confidential business information" under section 364.183(3), in that disclosure will cause harm to the Company's business operations, we reject embarrassment of employees and the potential impact on company operations as the type of harm contemplated by section 364.183(3).

disclosure. Tribune v. Cannella, 458 So.2d 1075 (Fla. 1984), appeal dismissed, 471 U.S. 1096 (1985); Michel v. Douglas, 464 So.2d 545 (Fla. 1985); Dade Co. School Board v. Miami Herald, 443 So.2d 268 (Fla. 3d DCA 1983). Moreover, the Florida Supreme Court has held that there was no state or federal right of disclosural privacy in tax-supported hospital's personnel records in the context of Florida's Public Records Law. 464 So.2d 545.

⁶ There is support for this interpretation of the statute in Southern Bell's motion at p. 3: "The four areas of employee personnel information that are not, per se, confidential pursuant to section 364.183(f), Florida Statutes, are compensation, duties, qualifications, and responsibilities of an employee."

⁷ Southern Bell Telephone and Telegraph Company v. Beard, 597 So.2d 873 (Fla. 1st DCA 1992) (held that the Commission did not abuse its discretion by declining to afford proprietary confidential business status for Southern Bell documents despite company's contention that disclosure might result in embarrassment to company's managers); In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service

We note that Southern Bell urges us to apply a balancing test which weighs the benefits to be derived from public disclosure against the detriment to the Company and its employees. However, in the absence of a specific statutory exemption, we may not deny disclosure based upon public policy considerations that attempt to weigh the relative significance of the public's interest in disclosure with the damage to an individual institution resulting from such disclosure.⁸

Accordingly, Southern Bell's request for confidential treatment for portions of the deposition transcripts, which comprise Document No. 10384-92, is denied.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Motion for Confidential Treatment for portions of Document No. 10384-92 is denied.

Activities and Reports, 92 F.P.S.C. 9:470 (1992) (Prehearing Officer's prior ruling in this docket rejects embarrassment of employees and its potential impact on Company operations as the type of harm contemplated by section 364.183(3), Florida Statutes, with regard to internal self-critical reports of company operations); Cf. News-Press v. Wisher, 345 So.2d 646, 648 (Fla. 1977) ("No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.").

⁸ Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982) ("[p]ublic policy considerations, aside from statutory or constitutional rights, can no longer be urged as an exemption to the Public Records Law.").

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 15th day of June, 1993.


SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by section 120.59(4), Fla. Stat. (1991) to notify parties of any administrative hearing or judicial review of Commission orders that is available under sections 120.57 or 120.68, Fla. Stat. (1991 & 1992 Supp.) as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Fla. Admin. Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Fla. Admin. Code Rule 25-22.060, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Fla. Admin. Code Rule 25-22.060. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Fla. R. App. P. 9.100.