

1993, as Attachment "C" to Southern Bell's motion. Attachment "C" to Southern Bell's motion was assigned Document No. 1697-93.

Documents filed with the Commission are public records subject to public disclosure under section 119.07(1), Fla. Stat. (1991). Section 119.07(3), however, exempts from public disclosure those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law. In the absence of a specific statutory exemption, the Commission may not deny disclosure based upon a judicially created privilege of confidentiality² or based upon public policy considerations which attempt to weigh the benefits to be derived from public disclosure against the detriment to the Company and its employees resulting from such disclosure.³

Section 364.183, Fla. Stat. (1991) defines "proprietary confidential business information" as information which is one of the statutory examples set forth therein or information the disclosure of which will cause harm to Southern Bell or its ratepayers. 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 under section 364.183.

Southern Bell seeks confidential classification for the identity of the Southern Bell employee whose personnel records were produced in response to Staff's discovery request. The documents are Records of Grievances between Communications Workers of America and Southern Bell, B-Forms and Performance Evaluations. Southern Bell contends that "these documents include records of personnel actions and procedures relating to employee activities that would fall outside normal and acceptable duties and responsibilities [and] do not relate to the employee's normal compensation or to any qualifications for employment."⁴ Southern Bell relies on subsection (f) of 364.183(3), which states that "proprietary confidential business information" includes "[e]mployee personnel

² Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979).

³ Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982).

⁴ Southern Bell's motion at p.2.

information unrelated to compensation, duties, qualifications or responsibilities." Southern Bell argues that the identity of the employee found in these personnel records is unrelated to compensation, duties, qualifications or responsibilities and, therefore, it is "proprietary, confidential business information" exempt from public disclosure by that provision.

Moreover, Southern Bell incorporates by reference the arguments it raised in its Request for Confidential Classification filed on September 9, 1993 in this docket, wherein Southern Bell sought confidential classification for the identities of employees disciplined by Southern Bell. Southern Bell argued in that motion, as it does here, that information concerning alleged non-performance of an employee's duties and responsibilities is information unrelated to that employee's duties and responsibilities. In ruling on that motion, it was held that the fact that an employee had been disciplined by Southern Bell is information related to performance of the employee's jobs and, therefore, it is employee personnel information which is related to duties or responsibilities. Here, the fact that the personnel information at issue may contain suggestions that an employee's performance was unsatisfactory is information related to that employee's performance of his duties or responsibilities. As such, this information is not "proprietary confidential business information" as defined by the legislature in section 364.183(3) and, therefore, it is information not exempt from public disclosure by that provision.

Southern Bell further argues, as it did in its previous motion filed on September 9, 1993, that public disclosure of the identity of the employee found in the personnel records would embarrass the employee. As it was noted in the ruling on that motion, once it is concluded that the information at issue 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). Nonetheless, with regard to Southern Bell's suggestion that the information is "proprietary confidential business information" under section 364.183(3), in that disclosure of the

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employee's identity found in the personnel records will embarrass the employee, the Prehearing Officer's prior ruling rejects the embarrassment of employees and the potential impact on Company operations as the type of harm contemplated by section 364.183(3).

Accordingly, Southern Bell's request for confidential classification for portions of Document Nos. 1045-93 and 1697-93 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 Classification for portions of Document Nos. 1045-93 and 1697-93 is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 30th day of June, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)
JRW

⁵ Order No. PSC-93-0905-CFO-TL; Accord 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).

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.