

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 AND SUPPLEMENTAL MOTION FOR
FURTHER RELIEF**

THIS CAUSE came before the court on Petitioners'¹ Amended and Supplemental Motion for Further Relief. The Court, having considered the amended motion and responses, having heard arguments from counsel, having heard live testimony² and received evidence, having conducted an *in-camera* review, and being otherwise duly advised in the premises, rules as follows:

On March 21, 2018, Petitioners filed a motion for further relief, seeking additional video recordings from the exterior cameras of Marjory Stoneman Douglas High School. On March 22, 2018, Broward County Sheriff's Office and Sheriff Scott Israel (collectively "BSO") filed a response. On March 23, 2018, School Board of Broward County and Superintendent Robert W.

¹ ABC, Inc.; The Associated Press; The Bradenton Herald; Cable News Network, Inc.; the First Amendment Foundation; the Florida Press Association; Gannett Co., Inc.; Los Angeles Times Communications LLC; Miami Herald Media Company; The New York Times Company; Orlando Sentinel Communications Company, LLC; and Sun-Sentinel Company, LLC.

² The Court heard live testimony from: (1) Detective Zachary Scott; and (2) Craig Kowalski.

Runcie (collectively “School Board”) filed a response. A status conference was held before the Court on March 23, 2018. The Court ordered Petitioners to file an amended motion clarifying the relief sought in the instant matter.³ On March 27, 2018, Petitioners filed the instant Amended and Supplemental Motion for Further Relief (“Amended Motion”). A subsequent status conference was held before the Court on April 2, 2018. On April 3, 2018, the State Attorney’s Office (“SAO”) filed a response to the Amended Motion. Also, on April 3, 2018, the Media Intervenors⁴ filed a memorandum of law regarding the applicability of the active criminal investigative exemption. An evidentiary hearing was held before the Court on April 4, 2018. This Court reserved ruling on the Amended Motion pending an *in-camera* review.⁵ BSO submitted the redacted video recordings from the exterior cameras for this Court’s *in-camera* inspection, which the Court has now reviewed.⁶

Before this Court addresses the Amended Motion, it is important to reiterate that this Order is limited solely to the five video recordings of the exterior cameras of Marjory Stoneman Douglas High School submitted to this Court for *in-camera* review. The Court will now continue with its analysis.

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),

³ In addition, the Court granted the Estate of John/Jane Doe’s Motion to Intervene, filed March 22, 2018.

⁴ 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.

⁵ In addition, the Court granted SAO’s Motion for Court to Take Judicial Notice, filed April 4, 2018.

⁶ At the April 4, 2018 hearing, the parties agreed that this Court would review redacted versions of the video recordings.

Florida Statutes; (2) section 119.071(3), Florida Statutes; and (3) section 281.301(1), 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, SAO argues that the video recordings from the exterior cameras constitute active criminal investigative information and are therefore, exempt from disclosure pursuant to 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." In support of their argument, SAO cites to sections 119.011(3)(b) and (3)(d)(2), Florida Statutes. 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 the five video recordings are not “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). While this Court recognizes that there is an active criminal investigation of Nikolas Cruz, the record does not establish that the disclosure of the five videos will impede such investigation. Furthermore, although the contents of the video recordings from the exterior cameras relate to the events that took place at Marjory Stoneman Douglas High School, this Court fails to find that the videos in question *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, the School Board argues 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. 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 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 law enforcement response 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 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.

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. Therefore, this

Court instructs the Broward County Sheriff's Office to produce the redacted versions of the video recordings to Petitioners.

Accordingly, it is hereby:

ORDERED that Petitioners' Amended and Supplemental Motion for Further Relief is GRANTED.

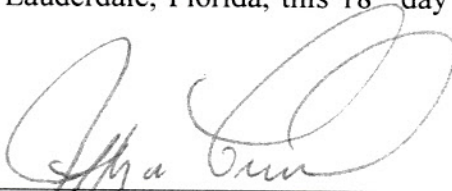
IT IS FURTHER ORDERED that this action is STAYED until 12:00 pm on Wednesday, May 2, 2018, for an opportunity to appeal.

IT IS FURTHER ORDERED that counsel for the School Board of Broward County and Superintendent Robert W. Runcie, Eugene K. Pettis, Esq., shall be permitted to view the redacted versions of the video recordings that have been submitted to this Court for *in-camera* inspection, for the purpose of assisting his clients in their determination of whether to appeal this Order, so long as such video recordings remain in the custody and control of Respondent, Broward County Sheriff's Office.

IT IS FURTHER ORDERED that should an appeal not be filed by 12:00 pm on Wednesday, May 2, 2018, then Respondent, Broward County Sheriff's Office, shall provide redacted versions 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 18th day of April, 2018.


JEFFREY R. LEVENSON
CIRCUIT COURT JUDGE

Jeffrey R. Levenson

APR 18 2018

True Copy

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