

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO.: 48-2008-CF-15606-O

DIVISION: 99

vs.

CASEY MARIE ANTHONY,  
Defendant.

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**ORDER DENYING MOTION TO SEAL JAIL VISITATION LOG RECORDS**

THIS MATTER came before the Court for hearing on June 1, 2010, on the Defendant's Motion to Seal Jail Visiting Log Records, filed on April 29, 2010. After carefully considering the Motions, arguments of counsel, and the law, the Court finds and determines as follows:

Counsel for the defense petitions the Court to enter an Order directing the Administrator of the Orange County Jail to seal and maintain the confidentiality of all records of visitors to the Defendant, Casey Marie Anthony. Specifically, counsel moves the Court to seal the "jail visitation log," which documents the names of persons who visit the Defendant, an inmate awaiting trial on criminal charges. Of particular concern to the defense is the identification of expert witnesses who will be meeting with the Defendant to assist in the preparation of her case. Counsel for the Defendant argues that the mere identity of these individuals to the news media "will cause unfounded speculation, as well as 'google' inquiries," thus severely hampering her entitlements to due process, equal protection of the law, and effective assistance of counsel.

Counsel for Orange County, on behalf of Orange County Corrections, has filed a Response opposing the Defendant's Motion based upon the Florida Public Records Law as well as Article I, section 24 of the Florida Constitution.

The issue thus presented is whether or not a trial court may rightfully order an administrative agency, in this case the county jail, to seal public records that are within its exclusive possession. For the reasons discussed *infra*, the Court finds that it can not.

First, such an order would amount to a violation of the doctrine of separation of powers set forth in Article II, section 3 of the Florida Constitution, which mandates that no branch of government may encroach upon the powers of another. *Florida Dept. of State, Div. of Elections v. Martin*, 916 So. 2d 763 (Fla. 2005); *Bush v. Schiavo*, 885 So. 2d 321 (Fla. 2004); *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008). In adherence to this basic principle, the judiciary is precluded from interfering with, much less usurping the proper authority of, the executive. *Sharrard v. State*, 998 So. 2d 1188 (Fla. 4th DCA 2009). Moreover, a trial court is forbidden from entering an injunction that requires an administrative agency to perform its duties in a particular way. *Crowley Museum and Nature Center, Inc. v. Southwest Florida Water Management Dist.*, 993 So. 2d 605 (Fla. 2d DCA 2008).

In addition, it is well-established that a trial court may not interfere with and does not have the authority to enter into the decision-making process which is delegated to an executive agency. *Department of Revenue ex rel. Jackson v. Nesbitt*, 975 So. 2d 549 (Fla. 4th DCA 2008); *Agency for Persons with Disabilities v. J.M.*, 924 So. 2d 1 (Fla. 3d DCA 2005), *review denied*, 932 So. 2d 193 (Fla. 2006) The jail visitation log record is an administrative procedure utilized by the Orange County Jail to ensure the safety and security of inmates, jail employees, and the general public by recording the identity of visitors to its facilities. The agency has determined in its discretion that the visitation log is a vital tool in effecting those means.

As such, to require a judge to second guess administrative decisions would place the judicial branch in a supervisory role over basic executive branch, public protection functions in

violation of the separation of powers doctrine. *Strickland v. Department of Agriculture and Consumer Services*, 922 So. 2d 1022 (Fla. 5th DCA 2006). This the Court may not do absent a violation of constitutional or statutory rights. *Miami-Dade County v. Miller*, 19 So. 3d 1037 (Fla. 3d DCA 2009). While counsel for the defense argues that failure to seal the jail visitation log records would violate the Defendant's entitlements to due process, equal protection, and effective assistance of counsel, the Court remains unpersuaded.

First, the Defendant's claim that failure to seal the jail visitation log is violative of her right to equal protection of the law is without merit. "Equal protection of the laws" means that each person is entitled to stand before the law on equal terms with, to enjoy the same rights as belong to, and to bear the same burdens as are imposed on, others in a similar situation.

*McDaniel v. Board of Public Instruction for Escambia County, Fla.*, 39 F. Supp. 638 (N.D. Fla. 1941); *Caldwell v. Mann*, 157 Fla. 633, 26 So. 2d 788 (1946); *Riley v. Lawson*, 106 Fla. 521, 143 So. 619 (1932). All *similarly situated* persons are equal under the law and must be treated alike; the rights of all persons or classes must rest on the same rule under *similar circumstances*. (Emphasis supplied). *Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc.*, 793 So. 2d 899 (Fla. 2001).

Thus, equal protection is not violated merely because some persons are treated differently than other persons; it only requires that persons similarly situated be treated similarly, and it demands only reasonable conformity in dealing with persons similarly situated. *Duncan v. Moore*, 754 So. 2d 708 (Fla. 2000); *Fredman v. Fredman*, 960 So. 2d 52 (Fla. 2d DCA 2007), *review denied*, 968 So. 2d 556 (Fla. 2007) *and cert. denied*, 128 S. Ct. 1481, 170 L. Ed. 2d 297 (U.S. 2008).

The jail visitation log records the identification of every person that visits an inmate in the Orange County Jail. Consequently, the Defendant's contention that she is being treated disparately from similarly situated persons, i.e., other inmates, is simply unfounded.

Equally implausible is the argument that if the jail visitation log isn't sealed, the Defendant will not receive effective assistance of counsel. Even if the Court was vested with such authority, it is not convinced that the disclosure of the jail logs would give the prosecution any tactical advantage. The disclosure of jail visitors' names does not hold the potential to reveal privileged communications. In fact, the Defendant ultimately will be required to disclose to the prosecution the names of all testifying experts, along with any other reports or statements of experts made in connection with the case. Fla. R. Crim. P. 3.220(d)(1)(A) and (B)(ii). Furthermore, any "unfounded speculation" on the part of the news media is beyond the ambit of the Court.

Lastly, counsel for the defense claims that failure to seal the jail log would result in impingement to the Defendant's entitlement to due process of law. Although the Defendant's Motion contains very general allegations concerning the nature of this alleged due process violation, it fails to cite any authority that stands for the proposition that jail inmates have a fundamental right to seal visitation log records.<sup>1</sup> Perhaps most telling, the Motion is bereft of any citation to legal authority at all. While it is true that during the hearing on the Motion counsel did offer one case to support its position, it is easily distinguishable.

In *Powell v. Foxman*, 528 So. 2d 91 (Fla. 5th DCA 1988), the defendant sought a writ of mandamus to compel the State to produce *recorded testimony* of the minor victim during a dependency hearing (Emphasis supplied). The District Court of Appeal, in granting the writ, held that the defendant was entitled to the prior recorded testimony based on the Confrontation Clause

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<sup>1</sup> The issues presented in this case do not broach procedural due process matters.

of the Sixth Amendment of the United States Constitution and Article I, section 16, of the Florida Constitution. Clearly, *Foxman* is not analogous to the instant case.

First, the jail log does not constitute any form of “testimonial evidence” which entitles the Defendant a right to confront and cross-examine it. *See Crawford v. Washington*, 541 U.S. 36 (2004). Furthermore, the defendant in *Foxman* sought to have records produced rather than concealed, as in the case *sub judice*. Finally, and perhaps most germane to the disposition of this claim, *Foxman* involved court records. It did not pertain to public records that were in the exclusive possession of a co-equal branch of government.

To the contrary, the Florida Supreme Court has expressly held that the judiciary only has exclusive power and responsibility over court records, and it has further acknowledged the distinction between court records and records that are not in the exclusive possession of the courts. *Johnson v. State*, 336 So. 2d 93 (Fla. 1976); *State v. D.H.W.*, 686 So. 2d 1331). Indeed, the court explicitly ruled that under the separation of powers doctrine, a court’s power to order the sealing of nonjudicial criminal history records not in the custody of the courts derives only from a legislative grant by statute. *D.H.W.* 686 at 1334.

Additionally, as counsel for Orange County aptly points out, the Orange County Jail is an agency subject to the Florida Public Records Law. This statute, along with Article I, section 24 of the Florida Constitution, mandates that all public records of county agencies are open for inspection and copying by any person. § 119.01, and 119.011(1), Fla. Stat. (2010).

A “public record” is defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristic or means of transmission, made or received pursuant to law or

ordinance or in connection with the transaction of official business by any agency.” § 119.011(11), Fla. Stat. (2010).

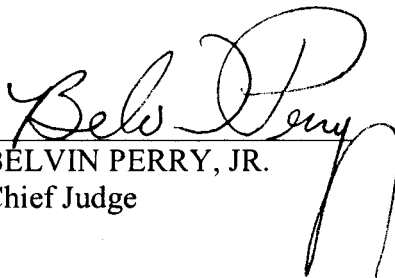
Clearly, the jail log constitutes a public record that is subject to the statute. As such, Orange County Corrections Department is required to permit inspection of the log upon request by any person, unless it falls into one of the statutory exemptions listed in Section 119.071, Florida Statutes (2010), or is exempt pursuant to any other law.

The Court agrees with the County that a criminal defendant’s desire to “maintain the confidentiality of visitors” in a high profile case does not qualify as a lawful exemption. As mentioned *supra*, the Defendant’s Motion does not provide any statutory exemption or legal authority for the Court to “seal” documents that constitute public records.

Instead, counsel for the defense entreats the Court to judicially create an exemption in this case. The Court is unable to acquiesce. Any exemption from the Florida Public Records Act must originate in the legislature and not by judicial decision. *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Accordingly, the Defendant’s Motion to Seal Jail Visitation Log Records is DENIED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 7<sup>th</sup>  
day of June 2010.

  
BELVIN PERRY, JR.  
Chief Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by U.S. Mail or hand delivery this 27<sup>th</sup> day of June, 2010 to:

- Linda Drane Burdick, Jeffrey L. Ashton, and Frank George, Assistant State Attorneys, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801;
- Jose Baez, Esquire, The Baez Law Firm, 522 Simpson Road, Kissimmee, Florida 34744;
- J. Cheney Mason, Esquire, J. Cheney Mason, P.A., 390 North Orange Avenue, Suite 2100, Orlando, Florida 32801;
- Andrea Lyon, Esquire, Director, Center for Justice in Capital Cases, DePaul University College of Law, 1 East Jackson Boulevard, Chicago, Illinois 60604;
- Tamara L. Gappen, Assistant County Attorney, Orange County Attorney's Office, Orange County Administration Center, P.O. Box 1392, Orlando, Florida 32802.

  
Jill Kay  
Judicial Assistant