



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 25, 2020

CBCA 6636-FEMA

In the Matter of FLORIDA KEYS COMMUNITY COLLEGE

Thomas M. Gonzalez of GrayRobinson, P.A., Tampa, FL, counsel for Applicant.

Allison McLeary and Sherin Joseph, Bureau of Recovery, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee.

Ramoncito J. deBorja and Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **GOODMAN, DRUMMOND, and O'ROURKE.**

Background

The applicant, Florida Keys Community College, has purchased a copy of the transcript of the arbitration hearing in this case, which was held on February 25-26, 2020. The applicant has informed the arbitration panel that it wishes to disclose the transcript to the public pursuant to the Florida Public Records Act, Fla. Stat. ch. 119 (2019). Article I, section 24(a) of the Florida Constitution provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.” Section 119.011(12) of the Florida Public Records Act defines public records to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, . . . or other material, regardless of the physical form, characteristics, or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

The applicant states:

The Applicant therefore believes that it and persons acting on its behalf have received a document that qualifies as a public record. Under Florida law, records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law. *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935), *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997). FLA. AGO-90-102. There is no such conflict. No statute makes the transcript confidential or requires it to be kept secret from the people of Florida. The Board's rules do not make the proceedings in this arbitration [word apparently omitted]. The rules do not limit the rights of a purchaser of a transcript. Finally, the rules provide that the court may allow recording, establishing that there is no statutory or other requirement of confidentiality

No prejudice will result to the process or the parties by allowing the Applicant to comply with requests for public records. The State of Florida puts great store in the ability of its citizens to be aware of the conduct of those who act in its behalf in representing the state in proceedings such as these.

WHEREFORE, the Applicant asks for a ruling confirming that the Applicant is not precluded from compliance with the Florida Public Records Act.

FEMA has filed a brief which reads in relevant part:

[U]nder [Board] Rule 611[, 48 CFR 6106.611 (2019)], the CBCA is clear in its regulations that hearings are not public, therefore the transcripts should remain confidential. For this reason, FEMA believes the panel should consider CBCA Rule 9(d)(1), wherein “[t]he Board may limit access to specified material in a record for decision if the Board finds good cause to treat the material as privileged, confidential, or otherwise sensitive.” In this case, FEMA believes the Panel may deem the transcript privileged, confidential, or sensitive if that is the CBCA's intent of Rule 611.

Discussion

CBCA Rule 611 reads in relevant part:

Live hearings are not public and may not be recorded by any means without the Board's permission. The Board may have a live hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy and has 7 calendar days after a copy is available to efile proposed corrections.

The provision in Rule 611, that live hearings are not public, is based on the principle that arbitrations are private, so only entities and individuals who are parties to the arbitration may attend with their representatives and witnesses. The intent of that provision was not to prevent public disclosure of information submitted during the arbitration, including that presented at the hearing and transcribed into an official record.

In the instant case, no party to the arbitration has requested the Board to deem any information as privileged, confidential, sensitive, or any other classification which would prevent disclosure to the public. The Florida Constitution allows every person the right to “inspect or copy” any public record. If the transcript is deemed to be a public record pursuant to Section 119.011(12) of the Florida Public Records Act quoted above, the applicant as a purchaser of the transcript is not precluded from allowing inspection of the transcript of the arbitration proceeding as stated in the Florida Constitution. However, the Board’s rules are not intended to supplant copyright protections, nor has the applicant demonstrated such intent in the Florida Constitution or statutes. The arbitration panel does not have the authority to resolve the question of whether the applicant’s allowing a person to copy the transcript, or the applicant’s posting the transcript online for viewing or publishing the transcript in any other manner, would violate copyright law.

Decision

The Board’s rules do not preclude the applicant from allowing inspection of the transcript of the arbitration hearing in this case.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge/Arbitrator

Jerome M. Drummond

JEROME M. DRUMMOND
Board Judge/Arbitrator

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE
Board Judge/Arbitrator