

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceeding against)	DOCKET NO. 900960-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH)	ORDER NO. 24226
COMPANY for misbilling customers)	ISSUED: 3/12/91

ORDER DENYING REQUEST FOR CONFIDENTIALITY

On February 1, 1991, our legal staff received by U.S. Mail 37 pages of documents from an anonymous source. Upon a cursory examination our staff determined that the documents appeared to be copies of Southern Bell Telephone and Telegraph (Southern Bell) materials. These documents appeared to be similar to documents previously examined by our staff in the possession of the Office of Public Counsel (OPC). The documents in OPC's possession are subject to a motion for temporary protective order filed January 11, 1991.¹ In addition, as of January 11, 1991, the Commission had a request for specified confidential treatment from Southern Bell of individual employee information. This request was served upon OPC. The anonymous documents received by staff on February 1, 1991, also contained individual employee names. Because the similar materials had been the subject of confidentiality requests, our staff requested that counsel from Southern Bell and OPC review the documents to determine if they contained proprietary confidential business information subject to Section 364.183, Florida Statutes, and our Rule 25-22.006, Florida Administrative Code.

Southern Bell and OPC simultaneously reviewed the documents on February 1, 1991. OPC immediately and orally requested that the documents be considered public records pursuant to Chapter 119, Florida Statutes, the Public Records Act. Southern Bell determined that the documents were indeed Southern Bell property and contained the names of company employees in association with information related to the sales results of the named employees. Southern Bell immediately and orally requested an opportunity to further review the documents to determine their confidential status and by that afternoon filed a formal request for such confidentiality. On February 5, 1991, OPC filed a formal petition requesting that these documents be made in toto a matter of public record.

¹This request was followed by a Motion for Permanent Protective Order on February 26, 1991.

DOCUMENT NUMBER-DATE

02414 MAR 12 1991

PSC-RECORDS/REPORTING

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OPC argues that the documents became Public Records the moment they were received by Commission legal staff without an accompanying request for confidential treatment.

Section 364.183, Florida Statutes, provides:

(1) . . . Upon the request of the company or other person, any records received by the commission which are shown by the company or other person and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

The above-cited section does not make any distinction as to how the Commission receives such information initially. The statute later defines "proprietary confidential business information" to be:

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Generally, public record status attaches to virtually all documents as soon as they come into the possession of the Commission. However, the Commission has a duty pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, to maintain the confidentiality of a document for which a request for confidential status is pending. The facts of this situation are not in dispute: the anonymous receipt of documents that apparently belong to Southern Bell and a pending request for confidential treatment of similar documents already produced. Under these facts it reasonably appears that the documents either should be treated as confidential pursuant to a pending request or

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be subject to the same request as if the documents were received in the normal course of business. As a result, it is appropriate to initially accord confidential treatment to the documents, subject to Southern Bell's request for specified confidential treatment. The manner in which the documents were received is out of the ordinary. Absent similar documents already produced and examined in the course of this proceeding and the requests already pending, a different result might obtain from anonymously received documents. However, such is not the case here.

It is clear from the statutory definition of proprietary, confidential business information and the specific statutory exemption provided for certain types of employee information that this Commission can not ignore Southern Bell's right to request confidentiality for this information, regardless of its anonymous source. To apply OPC's analysis would have the result of making public information in the anonymous materials that subsequently may be determined to be confidential. I find, therefore, that our staff acted properly in treating the documents as confidential, allowing Southern Bell and OPC to examine the documents and subsequently file pleadings regarding the confidentiality issue. Furthermore, OPC and any other party to the proceeding still have complete access to unredacted documents.

OPC, in addition to its argument that the documents are public records because of the manner in which they were obtained, also argues that the names listed in documents fall within the employee personnel information exception to Section 364.183, Florida Statutes. As stated earlier, Section 364.183, Florida Statutes, provides that confidential information includes:

- (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

OPC argues that the information contained in the documents is related to compensation, duties, qualifications or responsibilities of certain employees of Southern Bell.

Southern Bell argues that data associated with specific names in employee personnel information is unrelated to compensation or responsibilities. Southern Bell also argues that equity demands that employees be protected from unnecessary public exposure.

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Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Southern Bell has the burden to show that the material submitted is qualified for specified confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

From an examination of the pleadings and the documents it appears that Southern Bell has failed to meet its burden of proof in this matter. The simple assertion that names are unrelated to compensation, duties, qualifications, or responsibilities does not rise to the level necessary to rule these documents confidential. Moreover, under Section 364.183, Florida Statutes, it appears that information on an employee's compensation, duties, qualifications or responsibilities is specifically not exempt from public disclosure. In order to readily evaluate the relationship between compensation, duties, qualifications or responsibilities of an individual as well as the reliability of such information, it may well be necessary to identify the individuals. This is particularly so in this case where the actions of individuals are under scrutiny to determine whether these actions were sanctioned by or attributed to the company.

Based on the foregoing, it is, therefore,

ORDERED by Chairman Thomas M. Beard, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's request for specified confidential treatment of the documents identified in the body of this Order is denied as set forth in the body of this Order.

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By ORDER of Chairman Thomas M. Beard, as Prehearing Officer,
this 12th day of MARCH, 1991.


THOMAS M. BEARD, Chairman and
Prehearing Officer

(S E A L)

SFS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, 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 from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 4) 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 sewer utility. A motion for reconsideration

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shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. 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 Rule 9.100, Florida Rules of Appellate Procedure.