

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

COUNTY OF VOLUSIA,

Appellant,

v.

Case No. 5D09-3417

EMERGENCY COMMUNICATIONS NETWORK, INC., ETC.,

Appellee.

_____ /

Opinion filed July 23, 2010

Appeal from the Circuit Court
for Volusia County,
John V. Doyle, Judge.

Daniel D. Eckert, Deland, for Appellant.

Jonathan D. Kaney, Jr., of Cobb Cole,
Daytona Beach, and Noah C. McKinnon,
Jr., of Korey, Sweet, McKinnon, Simpson
& Vukelja, Ormond Beach, for Appellee.

PER CURIAM.

The County of Volusia appeals a final judgment denying its amended petition for writ of mandamus against the appellee, Emergency Communications Network, Inc., a private corporation that contracted with the County. The trial court determined that the data base created by Emergency Communications was not a public record because Emergency Communications was not an "agency" as defined by section 119.011(1), Florida Statutes (2009), of the public records act whether tested by the totality-of-factors

standard articulated in *News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992), or by the delegation standard announced by this court in *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 927 So. 2d 961 (Fla. 5th DCA), *review denied*, 945 So. 2d 1289 (Fla. 2006). We find no reason to disturb those findings and conclusions and accordingly affirm. We write only to note that during the well-presented oral argument of this case, Emergency Communications, recognizing the potential danger to the citizens of Volusia County, offered to give, under a nondisclosure agreement, the data base that is the subject of this appeal to the vendor taking the place of Emergency Communications.

AFFIRMED.

MONACO, C.J., COHEN, J. and PLEUS, JR., R., Senior Judge, concur.