

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

June 24, 2019

**CASE NO.: 4D19-1839**

L.T. No.: CACE 16-000158

WASTE MANAGEMENT INC. OF  
FLORIDA

v. BERGERON ENVIRONMENTAL AND  
RECYCLING, LLC, et al.

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that the petition for review is denied. The statutes providing for a public records exemption and restricting disclosure of information by regulators does not create an evidentiary privilege for Petitioner to oppose discovery in a judicial proceeding. Both statutes recognize that disclosure to a court may be appropriate. 15 U.S.C. § 18a(h) (“[N]o such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.”); § 542.28(9), Fla. Stat. (2018) (“However, the Attorney General or state attorney may disclose such investigative evidence to: (a) Any court or tribunal in this state . . .”).

Documents that Petitioner submitted to regulators do not automatically attain privileged status in judicial proceedings. Any privilege or confidentiality protections as to specific documents or information must come from an independent source. The trial court has not ruled on any privilege or protection claims as to any specific documents.

The trial court did not depart from the essential requirements of law in declining to close the crime-fraud hearing. Denial is without prejudice for Petitioner to again request limited closure if documents are determined to be privilege or protected and if they must be discussed or disclosed during the hearing.

Court proceedings are strongly presumed open, and any closure must comply with the requirements of *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988) (“[B]efore entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.”). The burden of establishing an exception to the strong presumption of openness always remains on the party seeking closure. *Id.*

DAMOORGIAN, CIKLIN and CONNER, JJ., concur.

Served:

cc: Brian K. Hole  
Darlene M. Lidondici  
Katherine M. Joffe  
Hon. Jack B. Tuter, Chief Judge

Lorin Louis Mrachek  
Frederick Jay Fein  
Daniel R. Lever

Mitchell W. Berger  
Ilene L. Pabian  
Clerk Broward

dl



---

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal

