

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOS COMMUNICATIONS, INC.;
AFFINITY NETWORK, INC.; and
NOSVA, LIMITED PARTNERSHIP,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

Appellants,

CASE NO. 1D02-3820

v.

STATE OF FLORIDA,
DEPARTMENT OF LEGAL
AFFAIRS; and ROBERT A.
BUTTERWORTH AS ATTORNEY
GENERAL,

Appellees.

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Opinion filed October 31, 2003.

An appeal from the Circuit Court for Leon County.
Judge P. Kevin Davey.

Floyd R. Self and E. Gary Early, Messer, Caparello & Self, P.A., Tallahassee, for
Appellants.

Charles J. Crist, Jr., Attorney General, Christopher M. Kise, Solicitor General, John
D.C. Newton, II, Senior Assistant Attorney General, John Topa, Assistant Attorney
General, Tallahassee, for Appellees.

BARFIELD, J.

The appellants challenge the trial court's order denying injunctive relief with

respect to the release, under Florida's Public Records Act, section 119.07, Florida Statutes, of documents they submitted to the Office of the Attorney General in response to a valid investigative subpoena. The trial court's order is AFFIRMED.

We note that appellants raised for the first time in their reply brief the argument that the documents at issue were exempt from the Public Records Act under section 815.045, Florida Statutes. Had this argument been raised and rejected in the trial court, and had that rejection been made an issue in the initial brief, we would have been constrained by this court's recent decision in SePRO v. Florida Department of Environmental Protection, 839 So. 2d 781 (Fla. 1st DCA 2003), review of which is currently being sought in the supreme court, to reverse the trial court's denial of injunctive relief.

WEBSTER and BROWNING, JJ., CONCUR.