

2-C-2 | AUTOPSY AND DEATH RECORDS**a. Autopsy Reports**

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. And see *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 777 (Fla. 4th DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed. Cf. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records).

Although autopsy reports are subject to Ch. 119, F.S., “[d]ocuments or records made confidential by statute do not lose such status upon receipt by the medical examiner.” AGO 78-23. See *Church of Scientology Flag Service Org., Inc. v. Wood*, *supra* (predeath medical records in the possession of the medical examiner are not subject to public inspection).

In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may apply to an autopsy report. AGO 78-23. See *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991), noting the application of the active criminal investigative information exemption to information contained in autopsy records.

b. Autopsy Photographs and Recordings

Section 406.135(2), F.S., provides that a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and may not be released except as provided by court order or as otherwise authorized in the exemption. See AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. And see *Inf. Op. to Lynn*, July 25, 2007 (exemption applies to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure). Cf. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th

DCA 2002), review denied, 848 So. 2d 1153 (Fla. 2003) (upholding trial court finding that newspaper failed to establish good cause for release of autopsy photographs of race car driver). Compare *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 14 (Fla. 2d DCA 2005), review denied, 918 So. 2d 293 (Fla. 2005), cert. dismissed, 126 S. Ct. 1139 (2006), in which the district court reversed a trial court order that had barred the media from viewing autopsy photographs that were admitted into evidence in open court during a murder trial; according to the appellate court, s. 406.135, F.S., "does not render these court exhibits confidential." (e.s.)

c. Photographs, Video and Audio Recordings that Depict or Record the Killing of a Law Enforcement Officer or the Killing of a Victim of Mass Violence

A photograph or video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1), F.S., and may not be disclosed except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information please refer to the discussion on page 125.

d. Death Certificates

Information relating to cause of death in all death and fetal death records, and the parentage, marital status, and medical information of fetal death records are confidential and exempt from s. 119.07(1), F.S., except for health research purposes as approved by the Department of Health. Section 382.008(6), F.S. And see s. 28.2221(5)(a), F.S. (clerk of court not authorized to place certain records, including death certificates, on a publicly available Internet website); s. 382.008(8), F.S. (confidential information in nonviable birth certificates). Cf. *Department of Health v. Rehabilitation Center at Hollywood Hills, LLC*, 259 So. 3d 979, 982 (Fla. 1st DCA 2018), overturning the lower court's order holding the agency in contempt for failing to produce death certificates of all Floridians who died within a specified time period because, among other things, the final judgment "failed to take into account the confidential or exempt status of information in the death certificates it ordered the Department to produce").



Section 382.025(2) (a), F.S., provides for the Department of Health to authorize the issuance of a certified copy of all or part of a death or fetal death certificate, excluding the portion that is confidential pursuant to s. 382.008, F.S., upon payment of the fee prescribed by that section. The statute also specifies those persons and governmental agencies authorized to receive a copy of a death certificate that includes the confidential portions. All portions of a death certificate cease to be exempt 50 years after the death. Section 382.025(2) (b), F.S.

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