2-C-15 | LAW ENFORCEMENT RECORDS

a. Arrest and Crime Reports and the Exemption for Active Criminal Investigative and Active Criminal Intelligence Information

(1) Arrest and Crime Reports

Arrest and crime reports are generally considered to be open to public inspection. AGOs 91-74 and 80-96. And see AGO 08-23 (officer trip sheets revealing identity of officer, location and hours of work and locations to which officers have responded for emergency and non-emergency purposes are public records); and AGO 12-07, discussing requirements for recording telephone conversations set forth in Ch. 934, F.S., Florida's Security of Communications law, but noting that "any recordings of telephone conversations made by [a police department] in the usual course of business would be public records," subject to the access and confidentiality provisions of the Public Records Act. Cf. s. 901.43(1), F.S., prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other payment to remove the photographs.

However, statutory exemptions for active criminal investigative and intelligence information, confessions, juvenile offender records and certain victim information may apply to crime reports and other law enforcement records. A discussion of these and other exemptions pertaining to law enforcement records follows; for additional information regarding exemptions, please refer to Appendix D and the Index, infra.

(2) Purpose and Scope of Exemption

Section 119.071(2)(c)1., F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt, the information must be both "active" and constitute either "criminal investigative" or "criminal intelligence" information. See Woolling v. Lamar, 764

So. 2d 765, 768 (Fla. 5th DCA 2000), review denied, 786 So. 2d 1186 (Fla. 2001).

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report. AGO 91-74. See also Palm Beach Daily News v. Terlizzese, No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), available online in the Cases database at the open government site at myfloridalegal.com, holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and unredacted incident report (prepared following a reported sexual battery but prior to the arrest of a suspect), including the investigating officer's narrative report of the interview with the victim, since such information was exempt from inspection as active criminal investigative information and as information identifying sexual battery victims. See s. 119.071(2)(c) and (h), F.S. See also the discussion on Marsy's Law on page 121.

The active criminal investigative and intelligence exemption is limited in scope; its purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. See Tribune Company v. Public Records, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., Gillum v. Tribune Company, 503 So. 2d 327 (Fla. 1987). And see Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC, 226 So. 3d 969, 973 (Fla. 4th DCA 2017), noting that the exemption furthers "the critical importance" of preserving the confidentiality of police records compiled during an ongoing investigation being conducted in good faith by criminal justice agencies.

Moreover, the active criminal investigative and intelligence information exemption does not prohibit the disclosure of the information by the criminal justice agency; the information is exempt from and not subject to the mandatory inspection requirements in s. 119.07(1), F.S., which would otherwise apply. As the court stated in Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991), "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display." And see AGO 90-50. Cf. s. 838.21, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

The law enforcement agency asserting the exemption has the burden of proving that it is entitled to it. Christy v. Palm Beach County Sheriff 's Office, 698 So. 2d 1365 (Fla. 4th DCA 1997); and Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985).

(3) Definition of Active Criminal Investigative or Intelligence Information

"Criminal intelligence information" means information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

Criminal intelligence information is considered "active" as long "as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal investigative information" is defined as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Section 119.011(3)(b), F.S. See Rose v.

D'Alessandro, 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information). Similarly, an autopsy report may constitute criminal investigative information. See AGO 78-23.

Such information is considered "active" as long "as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal justice agency" is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. Section 119.011(4), F.S.

(4) Information that is not Considered to be Criminal Investigative or Intelligence Information and must be Released unless some other Exemption Applies

Section 119.011(3)(c), F.S., states that the following information is not criminal investigative or criminal intelligence information:

1. The time, date, location and nature of a reported crime;

2. The name, sex, age, and address of a person arrested (but see pages 114-117 regarding confidentiality of certain juvenile crime records) or the name, sex, age and address of the victim of a crime, except as provided in s. 119.071(2)(h) or

(o). F.S. Section 119.071(2) (h), F.S., provides confidentiality for information revealing the identity of a victim of a sexual offense, child abuse, or a child victim of human trafficking. Section 119.071(2)(o), F.S., provides that the address of a victim of an incident of mass violence is exempt. For more information, please refer to the discussion of exemptions pertaining to certain crime victims found on pages 122-124 (child abuse and sexual offense victims) and page 125 (homicide victims). For information on the constitutional amendment known as Marsy's Law, please see the discussion on page 121;

3. The time, date and location of the incident and of the arrest;

4. The crime charged;

5. Documents given or required to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), F.S., unless the court finds that release of the information prior to trial would be defamatory to the good name of a victim or witness or jeopardize the safety of such victim or witness; and would impair the ability of the state attorney to locate or prosecute a codefendant;

6. Informations and indictments except as provided in s. 905.26, F.S. [prohibiting disclosure of finding of indictment against a person not in custody, under recognizance or under arrest].

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the "time, date, and location of the incident and of the arrest" cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information. See s. 119.011(3)(c)3., F.S. See also Barfield v. City of Tallahassee, 171 So. 3d 239 (Fla. 1st DCA 2015) (while "active criminal investigative information" is exempt from public disclosure requirements, the statute expressly excludes the time, date, location, and nature of a reported crime from the exemption).

(5) Records Released to the Defendant

Except in limited circumstances, records which have been given or are required to be given to the person arrested cannot be withheld from public inspection as criminal investigative or intelligence information. See s. 119.011(3)(c)5., F.S. In other words, once the material has been made available to the defendant as part of the discovery process in a criminal proceeding, the material is ordinarily no longer considered to be exempt criminal investigative or criminal intelligence information. See, e.g., Staton v. McMillan, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), review dismissed sub nom., Staton v. Austin, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under the rules of discovery). Accord Tribune Company v. Public Records, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), review denied sub nom., Gillum v. Tribune Company, 503 So. 2d 327 (Fla. 1987) and Times Publishing Company v. State, 903 So. 2d 322, 325 (Fla. 2d DCA 2005). Cf. State v. Buenoano, 707 So. 2d 714 (Fla. 1998) (restricted access documents provided to state attorney by federal government pursuant to a loan agreement retained their confidential status under a Florida law providing an exemption for out-of-state criminal investigative information that is shared with Florida criminal justice agencies on a confidential basis, even though the documents erroneously had been given to the defendant and placed in the court record).

For example, in Satz v. Blankenship, 407 So. 2d 396 (Fla. 4th DCA 1981), review denied, 413 So. 2d 877 (Fla. 1982), the court ruled that a newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recordings had been disclosed to the defendant. The court concluded that a reading of the statute reflected the Legislature’s belief that once the information was released to the defendant, there was no longer any need to exclude the information from the public. Thus, the tape recordings were no longer "criminal investigative information" that could be withheld from public inspection. See also News-Press Publishing Co. Inc. v. D'Alessandro, No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996), available online in the Cases database at the open government site at myfloridalegal.com (once state allowed defense counsel to listen to portions of a surveillance audiotape involving a city councilman accused of soliciting undue compensation, those portions of the audiotape became excluded from the definition of "criminal investigative information," and were subject to public inspection). Cf. City of Miami v. Post-Newsweek Stations Florida, Inc., 837 So. 2d 1002, 1003 (Fla. 3d DCA 2002), review dismissed, 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided such materials, requested materials were not "given or required by law... to be given to the person arrested" and thus did not lose their exempt status as active criminal investigative information).

Similarly, in Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d 775 (Fla. 4th DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986), the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. While the state attorney argued that the documents could be withheld because the criminal investigation was still "active" and thus exempt from disclosure, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information. Id. at 779n.1.

Chapter 119's requirement of public disclosure of records made available to the defendant does not violate the attorney disciplinary rule prohibiting extrajudicial comments about defendants as long as the state attorney does not put an interpretation on the record that prejudices the defendant or exposes witnesses. Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d at 780.

The only circumstances where criminal intelligence or investigative information can retain that status even though it has been made available to the defendant are:

1) If the information would reveal identifying information of a victim of a sexual offense, child abuse, or certain human trafficking crimes pursuant to s. 119.071(2)(h), F.S.; or identifying information of a witness to a homicide for a specified period as provided in s. 119.071(2)(m), F.S.; or the address of a victim of an incident of mass violence as provided in s. 119.071(2)(o), F.S.; or

2) If a court order has been issued finding that release of the information prior to trial would:

a) be defamatory to the good name of a victim or witness or jeopardize the safety of a victim or witness; and

b) impair the ability of a state attorney to locate or prosecute a codefendant.

In all other cases, material which has been made available to the defendant cannot be deemed criminal investigative or intelligence information and must be open to inspection unless some other exemption applies (e.g., s. 119.071[2][e], F.S., exempting all information "revealing the substance of a confession" by a person arrested until there is a final disposition in the case); or the court orders closure of the material in accordance with its constitutional authority to take such measures as are necessary to obtain orderly proceedings and a fair trial or to protect constitutional privacy rights of third parties. See Miami Herald Publishing Company v. Lewis, 426 So. 2d 1 (Fla. 1982); Florida Freedom Newspapers, Inc. v. McCrary, 520 So. 2d 32 (Fla. 1988); Post-Newsweek Stations, Florida Inc. v. Doe, 612 So. 2d 549 (Fla. 1992). And see Morris Communications Company LLC v. State, 844 So. 2d 671, 673n.3 (Fla. 1st DCA 2003) (although documents turned over to the defendant during discovery are generally public records subject to disclosure under Ch. 119, the courts have authority to manage pretrial publicity to protect the defendant's constitutional rights as described in Miami Herald Publishing Company v. Lewis, supra); Times Publishing Co. v. State, 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative). Cf. Rameses, Inc. v. Demings, 29 So. 3d 418, 423 (Fla. 5th DCA 2010) ("disclosure to criminal defendant during discovery of unredacted versions of undercover police surveillance recordings does not destroy, in a public records context, the exemptions contained in section 119.071 for information relating to the identity of undercover law enforcement personnel"). See also the discussion of Marsy's Law on page 121.

(6) Active Versus Inactive Criminal Investigative or Intelligence Information

(a) Active criminal investigative information

Criminal investigative information is considered active (and, therefore, exempt from disclosure pursuant to s. 119.071[2][c], F.S.) "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Section 119.011(3)(d)2., F.S. Information in cases barred from prosecution by a statute of limitation is not active. Id.

The definition of "active" requires "a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future." Barfield v. City of Fort Lauderdale Police Department 639 So. 2d 1012, 1016 (Fla. 4th DCA), review denied, 649 So. 2d 869 (Fla. 1994). Thus, "once the investigations are concluded, if no charges are filed, the records would cease to be 'active' and thus subject to disclosure." Id. at 1018.

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. See Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985). The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive. Id. at 1131. The Legislature did not intend that confidentiality be limited to investigations where the outcome and an arrest or prosecution was a certainty or even a probability. Barfield v. City of Fort Lauderdale Police Department at 1016-1017.

Thus, an investigation will be deemed to be "active," even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. Barfield v. City of Fort Lauderdale Police Department, supra. Accordingly, a police department's criminal investigation into a shooting incident involving its officers continued to be "active" even though pursuant to department policy, all police shooting cases were sent to the state attorney's office for review by the grand jury and the department did not know if there would be an arrest in this particular case. Id.

Similarly, in News-Press Publishing Co., Inc. v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985), the court held that in view of an ongoing investigation by the state attorney and the convening of a grand jury in the very near future to consider a shooting incident by deputy sheriffs during an undercover drug transaction, documents consisting of the sheriff's completed internal investigation of the incident constituted "active criminal investigative information" and were, therefore, exempt from disclosure. See also Wells v. Sarasota Herald Tribune Company, Inc., 546 So. 2d 1105 (Fla. 2d DCA 1989) (investigative files of the sheriff and state attorney were not inactive where an active prosecution began shortly after the trial judge determined that the investigation was inactive and ordered that the file be produced for public inspection).

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be "reactivated" and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not been viewed by the public during its "inactive" status and the file was now part of an active criminal investigation and therefore exempt from disclosure as active criminal investigative information. News-Press Publishing Co., Inc. v. McDougall, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992), available online in the Cases database at the open government site at myfloridalegal.com.

In another case, however, the appellate court upheld a court order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery. Metropolitan Dade County v. San Pedro, 632 So. 2d 196 (Fla. 3d DCA 1994). And see Mobile Press Register, Inc. v. Witt, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996), available online in the Cases database at the open government site at myfloridalegal.com in which the judge ordered that files in a 1981 unsolved murder be opened to the public because, despite recent reactivation of the investigation, the case had been dormant for many years and no arrest or prosecution had been initiated or was imminent.

(b) Active criminal intelligence information

In order to constitute exempt "active" criminal intelligence information, the information must "be of the type that will lead to the 'detection of ongoing or reasonably anticipated criminal activities.'" Christy v. Palm Beach County Sheriff's Office, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), quoting s. 119.011(3)(d)1., F.S. See Barfield v. Orange County, Florida, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992), available online in the Cases database at the open government site at myfloridalegal.com (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). See also AGO 94-48 (information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement constitutes active criminal intelligence information; even though some of the information may have come from closed investigations, the information is collected to "anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations").

By contrast, in Christy v. Palm Beach County Sheriff's Office, supra, the court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files." Id.

(c) Pending prosecutions or appeals

Criminal intelligence and investigative information is also considered to be "active" while such information is directly related to pending prosecutions or direct appeals. Section 119.011(3)

(d), F.S. See News-Press Publishing Co., Inc. v. Sapp, supra; and Tal-Mason v. Satz, 614 So. 2d 1134

(Fla. 4th DCA), review denied, 624 So. 2d 269 (Fla. 1993) (contents of prosecutorial case file must remain secret until the conclusion of defendant's direct appeal).

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active." See State v. Kokal, 562 So. 2d 324, 326 (Fla. 1990) and Osario v. State, 34 So. 3d 98 (Fla. 3rd DCA 2010). Accord Tribune Company v. Public Records, 493 So. 2d 480, 483-484 (Fla. 2d DCA 1986), review denied sub nom., Gillum v. Tribune Company, 503 So. 2d 327 (Fla. 1987) (actions for postconviction relief following affirmance of the conviction on direct appeal are not pending appeals for purposes of s. 119.011[3][d]2., F.S. See also Christy v. Palm Beach County Sheriff's Office, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997) (the term "pending prosecutions or appeals" in s. 119.011[3][d], F.S., applies only to ongoing prosecutions or appeals which have not yet become final).

Moreover, the determination as to whether investigatory records related to pending prosecutions or appeals are "active" is relevant only to those records which constitute criminal intelligence or investigative information. In other words, if records are excluded from the definition of criminal intelligence or investigative information, as in the case of records given or required to be given to the defendant under s. 119.011(3)(c)5., F.S., it is immaterial whether the investigation is active or inactive. See Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d 775, 779n.1 (Fla. 4th DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986) ("Something that is not criminal intelligence information or criminal investigative information cannot be active criminal intelligence information or active criminal investigative information.”). Accord Staton v. McMillan, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), review dismissed sub nom., Staton v. Austin, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under discovery rules even though there is a pending direct appeal).

(7) Criminal Defendant’s Public Records Request

Section 119.07(8), F.S., states that the public access rights set forth in s. 119.07, F.S., “are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings.” Thus, a criminal defendant’s public records request for nonexempt law enforcement records relating to the defendant’s pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation. Henderson v. State, 745 So. 2d 319 (Fla. 1999).

(8) Disclosure of Active Criminal Investigative Information to the Public

It has been held that the criminal investigative exemption does not apply if the information has already been made public. Staton v. McMillan, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), review dismissed sub nom., Staton v. Austin, 605 So. 2d 1266 (Fla. 1992). See also Downs v. Austin, 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information). Cf. State v. Buenoano, 707 So. 2d 714, 717 (Fla. 1998) (confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement).

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of other documents. Arbelaez v. State, 775 So. 2d 909, 918 (Fla. 2000). Accord 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 (release of the autopsy report and the medical examiner's public comments about the report did not mean that other records in the possession of the medical examiner relating to an active criminal investigation into the death were public; "[i]t is not unusual for law enforcement and criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime").

(9) Disclosure of Active Criminal Investigative Information to Another Criminal Justice Agency

Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status; in "determining whether or not to compel disclosure of active criminal investigative or intelligence information, the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests." City of Riviera Beach v. Barfield, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995). The City of Riviera Beach court held that exempt records of the West Palm Beach police department's active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. Accord Ragsdale v. State, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

Additionally, a police department may enter into a contract with a private company that compiles raw police data and then provides informational reports to law enforcement. The release of the exempt information to the corporation for this purpose would not cause such records to lose their exempt status. AGO 96-36.

However, while the courts have recognized that active criminal investigative information may be forwarded from one criminal justice agency to another without jeopardizing its exempt status, "[t]here is no statutory exemption from disclosure of an 'ongoing federal prosecution.'" Woolling v. Lamar, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), review denied, 786 So. 2d 1186 (Fla. 2001). In Woolling, the court held that a state attorney bore the burden of establishing that state attorney files in a nolle prossed case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption.

Moreover, the exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because they are transferred to a law enforcement agency. See, e.g., Tribune Company v. Cannella, 438 So. 2d 516, 523 (Fla. 2d DCA 1983), reversed on other grounds, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., Deperte v. Tribune Company, 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he "compiled" the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information); and State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc., 251 So. 3d 205 (Fla. 4th DCA 2018) (surveillance video footage created by a school district before a criminal investigation began did not constitute "criminal investigative information" within the meaning of s. 119.011[3]b] because it was not compiled by a criminal justice agency in the course of conducting a criminal investigation). And see New Times, Inc. v. Ross, No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992), available online in the Cases database at the open government site at myfloridalegal.com (papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection as the materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation).

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring the records to the Florida Department of Law Enforcement (FDLE). AGO 88-25. Accord Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because FDLE also conducts an investigation or because such report or a copy thereof has been transferred to that department. And see Sun-Sentinel, Inc. v. Florida Department of Children and Families, 815 So. 2d 793 (Fla. 3d DCA 2002).

Similarly, in AGO 92-78, the Attorney General’s Office concluded that otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because the records have been subpoenaed by and transferred to the state attorney’s office. Inf. Op. to Theobald, November 16, 2006, stating that while an individual would be prohibited from obtaining records from the internal investigation file pursuant to s. 112.533(2), F.S., while the investigation is active, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer’s personnel file would not become confidential simply because copies of such records are being used in the investigation.

However, the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of an ongoing investigation; to permit such requests would negate the purpose of the exemption. AGO 01-75.

In addition, a request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian’s response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from disclosure requirements, during the period in which the information constitutes active criminal investigative or intelligence information. Section 119.071(2)(c)2.a., F.S. The law enforcement agency that made the request must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that the custodian’s response to the request and information that would identify the public record requested are available to the public. Section 119.071(2)(c)2.b., F.S.

Thus, while agency records are not exempt merely because they have been submitted to FDLE, s. 119.071(2)(c)2.a., F.S., exempts FDLE’s request to inspect or copy records, as well as the agency’s response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active. AGO 06-04. Although a request may be made for the agency’s records, such a request may not be phrased, or responded to, in terms of a request for the specific documents asked for and received by FDLE during the course of any active criminal investigation. Id. Cf. Inf. Op. to Theobald, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

(10) Records Containing both Active Criminal Investigative Information and Non-Exempt Information

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not mean that the entire report is exempt from disclosure. Section 119.07(1)(d), F.S., requires the custodian of the document to redact only that portion of the record for which an exemption is asserted and to provide the remainder of the record for inspection and copying. See, e.g., City of Riviera Beach v. Barfield, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995), in which the court held that a city was authorized to withhold exempt active criminal investigative records but "must comply with the disclosure requirements of sections 119.07(2) [now s. 119.07(1)(d)] and 119.011(3)(c) by making partial disclosure of certain non-exempt information contained in the records including, inter alia, the date, time and location of the incident."

(11) Criminal Investigative or Intelligence Information Received from Other States or the Federal Government

Pursuant to s. 119.071(2)(b), F.S., criminal intelligence or investigative information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis is exempt from disclosure. See State v. Wright, 803 So. 2d 793 (Fla. 4th DCA 2001), review denied, 823 So. 2d 125 (Fla. 2002) (state not required to disclose criminal histories of civilian witnesses which it obtained from the Federal Bureau of Investigation). The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies." State v. Buenoano, 707 So. 2d 714, 717 (Fla. 1998). Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement. Id.

(12) Criminal Investigative or Intelligence Information Received Prior to January 25, 1979

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 119.071(2)(a), F.S. See Satz v. Gore Newspapers Company, 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981) ("All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January

25, 1979, is specifically exempt from the requirements of public disclosure.").

b. "Baker Act" Reports Prepared by Law Enforcement Officers

Part I, Ch. 394, F.S., is the "Baker Act," Florida's mental health act. The Baker Act provides for the voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to s. 394.463(2)(a)2., F.S., a law enforcement officer must take a person who appears to meet the statutory criteria for involuntary examination into custody and deliver that person, or have that person delivered, to the nearest receiving facility for examination.

Section 394.463(2)(a)2., F.S., requires the officer to "execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record." A patient's clinical record is confidential. Section 394.4615(1), F.S. Thus, the report prepared by the officer pursuant to this statute is part of the patient's clinical record and is confidential. Cf. Lake v. State, 193 So. 3d 932 (Fla. 4th DCA 2016) (Legislature has not made records of a sexually violent predator confidential in the same way as the clinical records of a Baker Act patient).

However, in AGO 93-51, the Attorney General's Office advised that a separate written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is filed with the law enforcement agency as a record of that event, and is not made a part of the patient's clinical record, is not confidential pursuant to Ch. 394, F.S. The opinion noted that the incident report in question was not the confidential law enforcement report required by s. 394.463(2)(a)2., but was a separate written incident or event report prepared by a deputy sheriff for filing with the sheriff's office as an independent record of the deputy's actions. Cf. s. 394.464(1), F.S., providing confidentiality for petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act and authorizing disclosure to specified persons and entities.

c. Body Camera Recordings

A body camera recording is confidential and exempt from public disclosure when taken inside a private residence, inside a health care, mental health care, or social services facility, or in a place that a reasonable person would expect to be private. Section 119.071(2)(l)2., F.S. The term "body camera" is defined to mean a "portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities." Section 119.071(2)(l)1.a., F.S.

A law enforcement agency may disclose the recording in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of that agency's duties and responsibilities. Section 119.071(2)(l)3., F.S.

The recording must be disclosed to certain individuals as set forth in the statute, including the person recorded, or pursuant to court order. Section 119.071(2)(l)4., F.S. And see s. 943.1718(2)(d), F.S. However, the exemption does not supersede any other public records exemption that existed before or is created after the effective date of the exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt. Section 119.071(2)(l)7., F.S.

A law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(l)5., F.S. The exemption applies retroactively. Section 119.071(2)(l)6., F.S.

d. Confessions

Section 119.071(2)(e), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition. See Times Publishing Co. v. Patterson, 451 So. 2d 888 (Fla. 2d DCA 1984) (trial court order permitting state attorney or defendant to designate affidavits, depositions or other papers which contained "statements or substance of statements" to be sealed was overbroad because the order was not limited to those statements revealing the substance of a "confession").

In AGO 84-33, the Attorney General's Office advised that only such portions of the complaint and arrest report in a criminal case file which reveal the "substance of a confession," i.e., the material parts of a statement made by a person charged with the commission of a crime in which that person acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense, are exempt from public disclosure. And see Times Publishing Company v. State, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), (portions of police interview transcript and tape which did not "directly relate to [the defendant's] participation in the crimes" did not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S.).

e. Confidential Informants

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such. Christy v. Palm Beach County Sheriff's Office, 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); Salcines v. Tampa Television, 454 So. 2d 639 (Fla. 2d DCA 1984); and Rameses, Inc. v. Demings, 29 So. 3d 418 (Fla. 5th DCA 2010). And see State v. Natson, 661 So. 2d 926 (Fla. 4th DCA 1995) (private citizen who provided police with tip information which led to defendant's arrest may be afforded confidential informant status). Cf. Doe v. State, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation and was justified in inferring or had a reasonable expectation that he would be treated as a confidential source, the citizen is entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office); State v. Bartholomew, No. 08-5656CF10A (Fla. 17th Cir. Ct., August 7, 2009), available online in the Cases database at the open government site at myfloridalegal.com (even if Crimestoppers Council of Broward County were an agency for purposes of Ch. 119, F.S., information relating to the identity of informants and persons from whom they received information would be confidential under s. 119.071[2][f], F.S.).

However, in Ocala Star Banner Corporation v. McGhee, 643 So. 2d 1196 (Fla. 5th DCA 1994), the court held that a police department should not have refused to release an entire police report on the ground that the report contained some information identifying a confidential informant. According to the court, "[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity)... can be taken out of the report and the remainder turned over to [the newspaper]." Id. at 1197. Accord Christy v. Palm Beach County Sheriff's Office, 698 So. 2d at 1368. And see Holley v. Bradford County Sheriff's Department, 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants). Cf. Althouse v. Palm Beach County Sheriff's Office, 92 So. 3d 899 (Fla. 4th DCA 2012), disapproved on other grounds, Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120 (Fla. 2016) (agency conceded that its initial response denying public records request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect"; records were subsequently produced after portions were redacted pursuant to s. 119.071[2][d], F.S.).

Moreover, in City of St. Petersburg v. Romine ex rel. Dillinger, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure, but said that "this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person's information or suspicion." Id.

Section 943.082(1), F.S., authorizes the Florida Department of Law Enforcement, in collaboration with the Department of Legal Affairs, to competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the department, law enforcement agencies, or school officials is confidential. Section 943.082(6), F.S.

f. Conviction Integrity Unit Reinvestigation Information

Section 119.071(2)(q), F.S., establishes an exemption for conviction integrity unit reinvestigation information, as defined in the exemption, for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation.

g. Criminal History Information

(1) Criminal History Information Generally

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990. And see AGO 97-09 (a law enforcement agency may, without a request, release nonexempt information contained in its public records relating to sexual offenders; the agency's authority to release such information is not limited to those offenders who are designated as "sexual predators").

Section 943.046, F.S., states:

> (1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt [from disclosure]. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may

> obtain a copy of an offender's criminal history record. (2) A state or local law enforcement agency and its personnel are immune from civil liability for the release of criminal history information or other information regarding a criminal offender, as provided by this section.

Section 943.053(2), F.S., referenced in the above statute, provides restrictions on the dissemination of criminal justice information obtained from federal criminal justice information systems and other states by stating that such information shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01.

Section 943.053(3)(a), F.S., states that criminal history information compiled by the Criminal Justice Information Program of the Florida Department of Law Enforcement from intrastate sources shall be provided to law enforcement agencies free of charge and to persons in the private sector upon payment of fees as provided in the subsection. And see page 116 relating to dissemination of criminal history information relating to juveniles.

(2) Sealed and expunged records

Access to criminal history records sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. See, e.g., Alvarez v. Reno, 587 So. 2d 664 (Fla. 3d DCA 1991) (Goderich, J., specially concurring) (state attorney report and any other information revealing the existence or contents of sealed records is not a public record and cannot, under any circumstances, be disclosed to the public). And see s. 943.0595, F.S., providing for automatic sealing of certain criminal history records.

A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges and the disposition of those charges. AGO 02-68. However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S. Id. And see AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585). Cf. s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

There are exceptions allowing disclosure of information relating to the existence of an expunged criminal history record to specified entities for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. Section 943.0585(6), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(6), F.S. And see s. 943.0583(10)(a), F.S. (expunged criminal history record of human trafficking victim). A records custodian who has received information relating to the existence of an expunged or sealed criminal history record is prohibited from disclosing the existence of such record. AGO 94-49.

h. Fingerprint Records

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5) (g), F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. Id.

i. Forensic Behavioral Health Evaluations

A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, F.S. (mentally deficient and mentally ill defendants) is confidential and exempt. Section 916.1065(1), F.S.

j. Geolocation Information

Law enforcement geolocation information of a law enforcement officer or a law enforcement vehicle that is held by a law enforcement agency is exempt from disclosure requirements. The exemption does not apply to traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information. Disclosure is required under specified circumstances. Section 119.071(4)(e), F.S.

k. Juvenile Offender Records

(1) Confidentiality and authorized disclosure

Juvenile offender records traditionally have been considered confidential and treated differently from other records in the criminal justice system. With limited exceptions, s. 985.04(1)(a), F.S., provides, in relevant part, that:

> Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department [of Juvenile Justice], the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt [from public disclosure]. This exemption applies to information obtained before, on, or after the effective date of this exemption. (e.s).

Section 985.04(1)(b), F.S., states that the confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon court order. Cf. AGO 96-65 (subject of juvenile offense records may authorize access to such records to others [such as a potential employer] by means of a release).

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice. With the exception of specified persons and agencies, juvenile records in the custody of that agency "may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper." If a juvenile prosecuted as an adult is transferred to serve his or her sentence in the custody of the Department of Juvenile Justice, the department's records relating to that juvenile are not open to public inspection. New York Times Company v. Florida Department of Juvenile Justice, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003), available online in the Cases database at the open government site at myfloridalegal.com.

Thus, as a general rule, access to records of juvenile offenders is limited. See, e.g., Inf. Op. to Galbraith, April 8, 1992 (city's risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and Inf. Op. to Wierzbicki, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information). And see AGO 07-19 (confidentiality provisions preclude public release of the names and addresses of the parents of juvenile arrested for a misdemeanor). And see s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. Cf. AGO 97-28 (juvenile confidentiality requirements do not apply to court records of a case in which a juvenile is prosecuted as an adult, regardless of the sanctions ultimately imposed in the case).

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S, "may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime." Section 985.11(1)(b), F.S. This statute authorizes a law enforcement officer to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime, regardless of whether those juvenile offenders are suspects in the crime under investigation. AGO 96-80. Cf. Barfield v. Orange County, Florida, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992), available online in the Cases database at the open government site at myfloridalegal.com (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

(2) Exceptions to Confidentiality

(a) Child Traffic Violators

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Section 985.11(3), F.S.

(b) Felony Arrests and Adult System Transfers

Until October 1, 1994, law enforcement agencies generally could release only the name and address of juveniles 16 and older who had been charged with or convicted of certain crimes. In 1994, the juvenile confidentiality laws were modified to eliminate the age restriction and provide enhanced disclosure. Section 985.04(2), F.S., was amended again in 2016 and now provides:

> Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:
>
> > (a) Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

> (b) Charged with a violation of law which, if committed by an adult, would be a felony;
>
> (c) Found to have committed an offense which, if committed by an adult, would be a felony; or
>
> (d) Transferred to adult court pursuant to part X of Chapter 985, are not considered confidential and exempt from s. 119.07(1) solely because of the child's age.

The Attorney General's Office has stated that the expanded disclosure provisions originally enacted in 1994 apply only to juvenile records created after October 1, 1994, the effective date of the 1994 amendments to the juvenile confidentiality laws. AGO 95-19. Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause. Id. See G.G. v. Florida Department of Law Enforcement, 97 So. 3d 268, 274 (Fla. 1st DCA 2012) ("it is clear that only the arrest records of those juveniles who the legislature has designated in section 985.04[2] have lost their confidential status and are available to the public...."). See also the discussion below regarding the dissemination of criminal history information relating to juveniles. Cf. s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this paragraph does not restrict public access to records as provided by s. 119.07, F.S. Section 985.04(2)(b), F.S.

(c) Mandatory Notification to Schools

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult, or a crime of violence. Section 985.04(4)(a), F.S. And see s. 1006.08(2), F.S. (notification by court to school superintendent); and s. 985.04(4)(c), F.S. (notification by school superintendent to certain school personnel). Cf. s. 985.04(4)(d), F.S. (notification by Department of Juvenile Justice of the presence of a juvenile sex offender in the care and custody or under the jurisdiction or supervision of the department).

(d) Criminal History Information Relating to Juveniles

Section 943.053(3)(c)1., F.S., provides that criminal history information relating to juveniles, including information that is confidential pursuant to s. 943.053(3)(b), F.S., shall be available to:

> (a) A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
>
> (b) The person to whom the record relates, or his or her attorney;
>
> (c) The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
>
> (d) An agency or entity specified in s. 943.0585(6) or s. 943.059(6), F.S., for the purpose specified therein, and any

person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

(e) Victim access

Section 985.036(1), F.S., allows the victim, the victim's parent or guardian, their lawful representatives, and, in a homicide case, the next of kin, to have access to information and proceedings in a juvenile case. Those entitled to access "may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies." Id. And see s. 960.001(8), F.S., authorizing similar disclosures to victims.

In addition, s. 985.04(3), F.S., states that a "law enforcement agency may release a copy of the juvenile offense report to the victim of the offense." Cf. Harvard v. Village of Palm Springs, 98 So. 3d 645 (Fla. 4th DCA 2012), noting that the authorization in s. 985.04(3), F.S., is permissive not mandatory; thus, a local government was not required to produce a juvenile offense report to the victim's mother.

l. Motor Vehicle Records

(1) Automated license plate recognition system records Images and data containing or providing personal identifying information obtained through use of an automated license plate recognition system are confidential and exempt. Section 316.0777, F.S.

(2) Crash reports

Prior to the enactment of Ch. 22-198, Laws of Florida, s. 316.066(2)(a), F.S., established confidentiality for motor vehicle crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that were held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes, for a period of 60 days after the report was filed. Specified agencies and entities, including the parties involved in the crash and certain media, were allowed immediate access. See s. 316.066, F.S. (2021).

However, Ch. 22-198, Laws of Florida, effective March 1, 2023, modified this exemption in several ways. First, the 60-day confidentiality period now applies to crash reports held by any agency as defined in s. 119.011, F.S. Agencies allowed immediate access include victim services programs, and any federal, state, or local governmental agency or private person or entity acting on behalf of such agency in carrying out its functions, as well as the parties involved in the crash, their legal representatives, and their insurers. Section 316.066 (2)(a)(b), F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023. Cf. AGO 01-59 (owner of vehicle involved in a crash authorized to receive access to crash report).

Crash reports held by an agency which do not contain the home or employment street addresses, driver license or identification card numbers, dates of birth and home and employment telephone numbers of the parties involved in the crash shall be made immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S. Section 316.066(2)(b), F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023.

"As a condition precedent to accessing a crash report, a person must present a valid driver's license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation. Section 316.066(2)(d), F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023.

The written statement must be completed and sworn to by the requesting party for each individual crash report. Id. Reports may be released without the sworn statement to third-party vendors under contract with one or more insurers, but only if the conditions set forth in the statute are stated in the contract. Id. Third-degree felony penalties are established for knowing unauthorized disclosure or use of confidential information in violation of this statute. See s. 316.066(3)(b), (c), and (d), F.S., for more information. See also s. 316.066(3)(e), F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023, providing a civil remedy.

Crash reports may be made available 60 days after the report is filed to any person or entity authorized in 316.066(2)(b) or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Section 316.066(2)(f), as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023.

If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential. Sixty days after the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to entities eligible to access the crash report under s. 316.066(2) (b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data shall be provided pursuant to a memorandum of understanding. Section 316.066(2)(g), F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023.

(3) Traffic citations

"Driver information" contained in a uniform traffic citation held by an agency is exempt from disclosure requirements. Section 316.650(11)(b)1., F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023. The term "driver information is defined to mean "a driver's date of birth, driver license or identification card number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number." Section 316.650(11)(a), F.S., as amended by Ch. 22-198, effective March 1, 2023. The term does not include the driver's name. Id. Driver information may be released in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S., and in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and disclosure requirements in 18 U.S.C. s. 2721(c). Section 316.650(11)(b)2., F.S., as amended by Ch. 22-198, Laws of Florida, effective March 1, 2023.

(4) Department of Highway Safety and Motor Vehicles motor vehicle records

Section 119.0712(2)(b), F.S., provides that personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq (DPPA). Such information may be released only as authorized by that act. The term "motor vehicle record" is defined to mean any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV). Section 119.0712(2)(a), F.S. Cf. AGO 10-10 (while DHSMV motor vehicle records are confidential in the hands of a law enforcement agency, to the extent information is taken from DHSMV records and used in preparing other records of a law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(b), F.S., do not reach those records created by subsequent users).

E-mail addresses collected by DHSMV pursuant to cited statutes [motor vehicle record and driver license transactions] are exempt from public disclosure requirements. Section 119.0712(2) (c), F.S. And see s. 119.0712(2)(d)1. and 2., F.S., providing that emergency contact information contained in a motor vehicle record is confidential, and may be released only as provided in the exemption.

Secure login credentials held by DHSMV are exempt, as are Internet protocol addresses, geolocation data, and other information from which a user accesses a public-facing portal. Section 119.0712(2)(f), F.S.

m. Pawnbroker Records

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant s. 539.001, F.S., the Florida Pawnbroking Act, are confidential and exempt from disclosure and may be used only for official law enforcement purposes. Section 539.003, F.S. However, law enforcement officials are not prohibited from disclosing the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of pawned property. Id. And see AGO 01-51.

n. Polygraph Records

The Attorney General’s Office is not aware of any statutory provision barring access to otherwise public records, simply because the records are in the form of polygraph charts. See, e.g., Wisner v. City of Tampa Police Department, 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and Downs v. Austin, 522 So. 2d 931 (Fla. 1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant’s accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

However, the s. 119.071(1)(a), F.S., exemption for questions and answers used in employment examinations applies to questions and answers contained in pre-employment polygraph examinations. Rush v. High Springs, 82 So. 3d 1108 (Fla. 1st DCA 2012). This exemption applies to examination questions and answers but does not include the "impressions and grading of the responses" by the examiners. See Dickerson v. Hayes, 543 So. 2d 836, 837 (Fla. 1st DCA 1989).

o. Prison and Inmate Records

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act. Cf. Williams v. State, 741 So. 2d 1248 (Fla. 2d DCA 1999) (order imposing offender's habitual offender sentence and documents showing his qualifying convictions, subject to disclosure under Ch. 119). And see Cruz v. State, 279 So. 3d 154 (Fla. 4th DCA 2019), finding that county jail visitation logs are public records, and rejecting the defendant's argument that the names of jail visitors should be protected from disclosure. Cf. s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities).

Subject to limited exceptions, s. 945.10, F.S., states that the following records and information held by the Department of Corrections are confidential and exempt from public inspection: mental health, medical (including HIV tests) or substance abuse records of inmates or offenders; pre-plea, pretrial intervention, presentence or post-sentence investigative records; information regarding a person in the federal witness protection program; confidential or exempt Florida Commission on Offender Review records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner or that identifies or could lead to the identification of any person or entity that participates in an execution; and records that are otherwise confidential or exempt by law. See Correll v. State, 184 So. 3d 478 (Fla. 2015), in which the Court summarized prior precedent upholding the constitutionality of

s. 945.10, F.S., and again rejected claims that an inmate has the right to know the identity of execution team members.

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail. Times Publishing Company v. Corrections Corporation of America, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), per curiam affirmed, 611 So. 2d 532 (Fla. 5th DCA 1993), available in the Cases database at the open government site at myfloridalegal.com. See also Prison Health Services, Inc. v. Lakeland Ledger Publishing Company, 718 So. 2d 204 (Fla. 2d DCA 1998), review denied, 727 So. 2d 909 (Fla. 1999) (records of private company under contract with sheriff to provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

p. Resource Inventories and Emergency Response Plans

Section 119.071(2)(d), F.S., exempts "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34...." See Timoney v. City of Miami Civilian Investigative Panel, 917 So. 2d 885 (Fla. 3d DCA 2005), in which the court held that a city police department's Operational Plan prepared in response to intelligence reports warning of possible violence surrounding an economic summit remained exempt from disclosure after the summit ended. The court found that the city planned to use portions of the Plan for future events and the "language of [the exemption] leads us to believe that the legislature intended to keep such security information exempt after an immediate emergency passes." Id. at 887. And see s. 119.071(3)(a)1., F.S., which includes "emergency evacuation plans" and "sheltering arrangements" within the definition of a "security or fire-safety system plan" that is confidential and exempt from public disclosure.

q. Surveillance Techniques, Procedures or Personnel

Information revealing surveillance techniques, procedures or personnel is exempt from public inspection pursuant to s. 119.071(2)(d), F.S. See Rameses, Inc. v. Demings, 29 So. 3d 418 (Fla. 5th DCA 2010) (disclosure to criminal defendant of unredacted undercover police surveillance recordings does not destroy exemption in s. 119.071[2][d], F.S.; therefore, sheriff is only required to provide redacted recording in response to a public records request). See also Althouse v. Palm Beach County Sheriff's Office, 92 So. 3d 899 (Fla. 4th DCA 2012), disapproved on other grounds, Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120 (Fla. 2016) noting that the agency had conceded that its initial response denying Althouse's request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect" and that the agency had subsequently produced the records after redacting portions pursuant to s. 119.071(2)(d), F.S. Cf. State v. Wooten, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018), in which the court noted that surveillance techniques are "exempt, not confidential and exempt." [Emphasis supplied by the Court]

The detailed schedule and travel plans of the Governor, including drive times and the time and location of the Governor's arrival and departure, were encompassed within the s. 119.071(2) (d), F.S., exemption where the Florida Department of Law Enforcement special agent submitted an undisputed affidavit attesting that premature disclosure of this information would reveal "surveillance techniques, procedures, or personnel," and would jeopardize the security of the Governor and the officers assigned to protect him. Executive Office of the Governor v. AHF MCO of Florida, Inc., 257 So. 3d 612 (Fla. 1st DCA 2018).

r. Undercover personnel

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. But see Ocala Star Banner Corporation v. McGhee, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994)(police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released). Accord Christy v. Palm Beach County Sheriff's Office, 698 So. 2d 1365 (Fla. 4th DCA 1997).

Information regarding law enforcement officers who are assigned to undercover duty and whose names appear on personnel rosters or other lists of all law enforcement officers of the city without regard to whether the record reveals the nature of their duties may constitute "[a]ny information revealing undercover personnel of any criminal justice agency[.]" AGO 15-02. The Legislature's determination that such information is exempt from public inspection, rather than confidential, conditions the release of exempt information upon a determination by the custodian that there is a statutory or substantial policy need for disclosure. Id.

For information on the identity of safe-school officers appointed pursuant to s. 1006.12, F.S., please refer to the discussion on page 157.

s. Victim information

(1) Marsy's Law

On November 6, 2018, Florida voters approved a constitutional amendment known as Marsy's Law. Marsy's Law amends Art. I, s. 16 of the Constitution to add several provisions relating to victim rights. Subsection (b)(5) provides that "every victim is entitled to the following rights, beginning at the time of his or her victimization" to include: "The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family or which could disclose confidential or privileged information of the victim." The amendment took effect on January 8, 2019.

Law enforcement officers who fatally shot suspects threatening them with deadly force were "victims" under Marsy's Law and were entitled to seek judicial relief to preclude release of information in public records that identified them. Florida Police Benevolent Association, Inc. v. City of Tallahassee, 314 So. 3d 796 (Fla. 1st DCA 2021), review granted, No. 21-651 (Fla. December 21, 2021).

(2) Statutory Exemptions Relating to Victim Information

Although s. 119.071(2)(c), F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of... the victim of a crime, except as provided in s. 119.071(2)(h) or (o)," are specifically excluded from the definition of criminal investigative or intelligence information. See s. 119.011(3)(c)2., F.S. defining the terms "criminal investigative information" and "criminal intelligence information." In addition to the victim exemptions identified above, there are other exemptions that may apply as follows:

(a) Amount of Stolen Property

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a crime victim, which were not involved in the crime, is exempt from disclosure. However, this exemption does not apply to information relating to the amount of property stolen during the commission of a crime. AGO 82-30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their "personal assets."

(b) Commercial Solicitation of Victims

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or nonconfidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. Id. The statute "does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information." Id. A willful and knowing violation of this statute is a third-degree felony. Section 119.10(2)(b), F.S.

(c) Documents Which are Received by an Agency Regarding Victims

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is received by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents received by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these agencies. AGO 90-80. Accordingly, this exemption does not apply to police reports. Id.

Section 119.071(2)(j)1., F.S., also provides that "[a]ny state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section." See Inf. Op. to McCabe, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department's internal affairs investigation).

(d) Home or Employment Address, Telephone Number, Assets

Victims of specified crimes listed in s. 119.071(2)(j)1., F.S., are authorized to file a written request for exemption of their addresses, telephone numbers and personal assets as follows:

> Any information not otherwise held confidential or exempt [from disclosure] which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment,

> aggravated battery, or domestic violence is exempt [from disclosure], upon written request by the victim which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. (e.s.)

This exemption is not limited to documents received by an agency, but exempts specified information in records--whether generated or received by--an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification, such as a copy of the incident or offense report for one of the listed crimes, that an applicable crime has occurred. See AGO 96-82. The exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity. City of Gainesville v. Gainesville Sun Publishing Company, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996). But see the discussion of Marsy's Law on page 121.

The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for exemption AGO 96-82. It applies to any records held by an agency and is not limited to those records relating to the offense. Id. "[A]n examination of the legislative history surrounding the adoption of this exemption indicates that the Legislature intended that the exemption not be limited to those documents identifying the individual as a victim of crime but rather be applied to any document revealing the personal information held by any agency." Id. And see AGO 02-50, in which the Attorney General's Office advised that s. 119.071(2) (j)1., F.S., does not contain an exception for copies of the police report that are sent to domestic violence centers pursuant to s. 741.29, F.S., if the victim has made a written request for exempt status of the personal information specified in s. 119.071(2)(j)1., F.S.

In addition, the requirement that the victim make a written request for exemption applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions, such as s. 119.071(2)(h), F.S., that may be applicable to certain crime victims. AGO 96-82

For more information on exemptions pertaining to domestic violence or stalking victims, please see the discussion on page 78.

(e) Information Identifying or Depicting Victims of Sex Offenses and of Child Abuse

(1) Law enforcement and prosecution records

Section 119.071(2)(h)1.a., F.S., provides confidentiality for criminal investigative and intelligence information that reveals the identity of a victim of the crime of child abuse, as defined by Ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is a victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S. Information which may reveal the identity of a victim of a sexual offense, including a sexual offense prohibited in s. 787.06(3)(b), (d), (f), or (g), or Chs. 794, 796, 800, 827, or 847, F.S., is also confidential. Section 119.071(2) (h)1.b., F.S.

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under ss. 787.06(3)(b), (d), (f), or (g) or 810.145, or Chs. 794, 796, 800, 827, or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim. Section 119.071(2)(h)1.c., F.S. See Harvard v. Village of Palm Springs, 98 So. 3d 645, 647 (Fla. 4th DCA 2012), rejecting a mother's assertion that there is "no law prohibiting her" from obtaining a copy of her son's videotaped interview, because s. 119.071(2)(h)1.a-c, F.S., "provides that a video of a victim is exempt from a public records request if it is taken during the course of one of several enumerated types of criminal investigations."

Thus, the Attorney General's Office advised that information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. And see Palm Beach County Police Benevolent Association v. Neumann, 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S.

Section 119.071(2)(h)2.a-c, F.S., sets forth circumstances which permit a law enforcement agency to disclose the confidential information. Moreover, the Attorney General's Office has advised that the confidentiality provisions do not apply to the identity of a child abuse victim who died from suspected abuse. AGO 90-103. But see the discussion on page 121 regarding Marsy's Law.

Section 119.071(2)(j)2a., F.S., provides that identifying information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties. Id. A public employee may not willfully and knowingly disclose videotaped information that reveals the minor's identity to anyone other than the designated individuals, including the defendant. Section 119.071(2)(j)2b., F.S. Cf. State v. Ingram, 170 So. 3d 727 (Fla. 2015) (J. Pariente concurring) (s. 119.071[2][j]2.b. does not authorize disclosure to a convicted incarcerated inmate of videotaped information that reveals the minor victim's identity).

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (abuse, aggravated abuse, and neglect of a child); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2) (h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim. Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. Cf. State v. Globe Communications Corporation, 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional).

An entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under Ch. 794 or Ch. 800 shall be liable to the victim for all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication. Section 794.026(1), F.S. The victim, however, may not maintain a cause of action unless he or she is able to show that such communication was intentional and was done with reckless disregard for the highly offensive nature of the publication. Section 794.026(2), F.S. Cf. Cox Broadcasting Corp. v. Cohn, 95 S.Ct. 1029 (1975); and Cape Publications, Inc. v. Hitchner, 549 So. 2d 1374 (Fla. 1989), appeal dismissed, 110 S.Ct. 296 (1989).

The Crime Victims' Services Office in the Attorney General's Office is authorized to receive confidential records from law enforcement and prosecutorial agencies. Section 960.05(2)(k), F.S. And see AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

(2) Court records

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h), F.S., must be maintained in court records and in court proceedings, including witnesses' testimony. If a petition for access to these records is filed with the trial court with jurisdiction over an alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrates certain factors as set forth in the statute. Section 92.56(1), F.S. A person who willfully and knowingly violates section 92.56, F.S., or any court order issued under this section is subject to contempt proceedings. Section 92.56(6), F.S. See also AGO 03-56 and s. 119.0714(1)(h), F.S.

(3) Department of Children and Families abuse records

As discussed on pages 74-75, there are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, i.e., ss. 415.107 and 39.202, F.S., apply to records of the Department of Children and Families [DCF] and do not encompass a law enforcement agency's arrest report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim. See AGO 93-54. Accord Inf. Op. to O'Brien, January 18, 1994. Cf. Times Publishing Company v. A.J., 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [see now Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." Id. at 1315.

Section 39.202(1) and (2)(b), F.S., authorizes criminal justice agencies to have access to confidential abuse, abandonment, or neglect records held by DCF and provides that the exemption from disclosure for DCF abuse records also applies to DCF records and information in the possession of the agencies granted access. See Inf. Op. to Russell, October 24, 2001.

(f) Homicide Victims and Witnesses

(1) Photographs and video or audio recordings of killing of law enforcement officer or killing of victim of mass violence

Section 119.071(2)(p)1., F.S., provides confidentiality for a photograph, 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. Disclosure may be made to certain persons and entities as authorized in the exemption. Section 119.071(2)(p)2., F.S. And see page 74, discussing the confidentiality of autopsy photographs.

The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean "all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Section 119.071(2)(p)1.a., F.S.

"Killing of a victim of mass violence" means events that depict either a victim being killed or the body of a victim killed in an incident in which 3 or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence. Section 119.071(2) (p)1.b., F.S.

Section 119.071(2)(p)7., F.S., provides that the exemption shall be given retroactive application and shall apply to all photographs and recordings of persons covered by the exemption regardless of whether the killing occurred before, on, or after the effective date of the act, May 23, 2019. And see State v. Schenecker, No. 11 CF 001376A (Fla. 13th Cir. Ct. August 3, 2011), cert. denied sub nom., Media General Operations v. State, 71 So. 3d 124 (Fla. 2d DCA 2011), in which the court concluded that a prior version of this statute applied to crime scene photographs of the victims. And see the discussion about Marsy's Law on page 121.

(2) Address of victim of an incident of mass violence

The address of a victim of an incident of mass violence is exempt from disclosure requirements. Section 119.071(2)(o), F.S. The term "incident of mass violence" means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. Id. And see the discussion about Marsy's Law on page 121.

(3) Homicide witness

Criminal investigative or intelligence information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S., is confidential for 2 years after the date on which the murder is observed by the witness. Section 119.071(2)(m), F.S. A criminal justice agency may disclose this information in the furtherance of its official duties and responsibilities; to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered; to another governmental agency for use in the performance of its official duties and responsibilities; to the parties in a pending criminal prosecution as required by law. Id. And see Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC, 226 So. 3d 969 (Fla. 4th DCA 2017) (applying exemption to shield the identity of witnesses who observed a homicide on the highway and whose vehicle was hit by bullets fired by the perpetrator as the witnesses attempted to follow the suspect's car).

(g) Human Trafficking Victims

Criminal intelligence information or criminal investigative information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged pursuant to s. 943.0583, F.S., is confidential. Section 943.0583(11)(a), F.S. Disclosure is authorized under certain circumstances. Section 943.0583(11)(b), F.S. And see s. 119.071(2)(h), F.S., relating to victims of the crime of human trafficking proscribed in s. 787.06, F.S., discussed on page 123.

Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation, as defined in s. 409.016, F.S., is confidential and exempt from public disclosure requirements. Section 409.1678(6)(a), F.S. Information may be provided to an agency as necessary to maintain health and safety standards and to address emergency situations in the house or facility. Section 409.1678(6)(b), F.S.

(h) Relocated victim or witness information

Information held by a law enforcement agency, prosecutorial agency or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness (or their immediate family) who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Section 914.27, F.S.