



FLORIDA'S SUNSHINE MANUAL
SUBPART 2-C: WHAT RECORDS ARE COVERED? APPLICATION OF
THE PUBLIC RECORDS ACT TO

Official Handbook on Public Records Laws

{Publish Date: 3/9/2023}

Subpart 2-C

What Records are Covered? Application of the Public Records Act to

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FLORIDA SUNSHINE MANUAL

PART 2

PUBLIC RECORDS



FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 2 PUBLIC RECORDS

SUBPART: C WHAT RECORDS ARE COVERED? APPLICATION OF THE
PUBLIC RECORDS ACT TO

SECTIONS: 2-C-0 through 2-C-22

LINK: TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S2C



2-C-0 | ADOPTION AND BIRTH RECORDS

Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records are considered to be confidential documents and exempt from public inspection; such records may be disclosed only as provided by law. Section 382.025(1), F.S.; AGO 74-70. Cf. s. 383.51, F.S. (the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S., is confidential).

Adoption records are also confidential and may not be disclosed except as provided in s. 63.162, F.S. And see s. 63.165(1), F.S. (state adoption registry); and s. 63.0541, F.S. (putative father registry).

An unadopted individual, however, has the right to obtain his or her birth records which include the names of the individual's parents from the hospital in which he or she was born. *Atwell v. Sacred Heart Hospital of Pensacola*, 520 So. 2d 30 (Fla. 1988).

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2-C-1 | ADOPTION AND BIRTH RECORDS

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

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488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed.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

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

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

b. Autopsy Photographs and Recordings

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



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

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

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

d. Death Certificates

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



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

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2-C-3 | CHILD AND VULNERABLE ADULT ABUSE AND PROTECTION RECORDS

a. Department of Children and Families Abuse Records

(1) Confidentiality of Abuse Records

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Families (DCF) are confidential and exempt from disclosure, except as expressly provided by statute. See ss. 39.202(1) and 415.107(1), F.S.

Thus, a union representative may not attend that portion of an investigatory interview between the DCF inspector general and an employee requiring the discussion of information taken from a child abuse investigation that is confidential under s. 39.202, F.S. AGO 99-42. And see s. 383.412(2)(b), F.S., providing that any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, or which reveals the identity of the surviving siblings, family members, or others living in the home of such deceased child is confidential and exempt from disclosure requirements. In addition, the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential. Section 383.412(2)(a), F.S.

All records and reports of the Child Protection Team of the Department of Health are confidential and exempt, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, by court order, or to health plan payors, limited to that information used for insurance reimbursement purposes. Section 39.202(6), F.S.

(2) Release of Abuse Records

Section 39.202(1), F.S., authorizes any person or organization, including DCF, to petition the court to make public DCF records relating to its investigation into alleged abuse, neglect, exploitation or abandonment



of a child. The court shall determine if good cause exists for public access to the records and is required to balance the best interest of the child and the interests of the child's siblings, together with the privacy rights of other persons identified in the reports against the public interest. Id.

This "balancing process" thus "requires the trial court to weigh the harm to the child against the benefit to the public that would potentially result from the disclosure of the records at issue." In re Records of the Department of Children and Family Services, 873 So. 2d 506, 513 (Fla. 2d DCA 2004). To perform this function, the trial court must conduct an in camera review because "[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what that information is." Id. at 514. But see Department of Health and Rehabilitative Services v. Gainesville Sun Publishing Company, 582 So. 2d 725 (Fla. 1st DCA 1991), holding that the trial court was not required to hold a hearing before finding good cause to release the department's records relating to a child abuse investigation, where shortly after the department's investigation, the individual who had been investigated killed the victim, the victim's family, and himself.

In cases involving serious bodily injury to a child, DCF may petition the court for immediate public release of records pertaining to the protective investigation. Section 39.2021(2), F.S. The court has 24 hours to determine if good cause exists for public release of the records. If no action is taken by the court in that time, DCF may, subject to specified exceptions, release summary information including a confirmation that an investigation has been conducted concerning the victim, the dates and a brief description of procedural activities undertaken in the investigation, and information concerning judicial proceedings. Id.

Similar procedures are established in Ch. 415, F.S., for access to DCF records relating to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. See s. 415.1071, F.S.

The petitioner seeking public access to the records must formally serve DCF with the petition. *Florida Department of Children and Families v. Sun-Sentinel*, 865 So. 2d 1278 (Fla. 2004). A "very narrow" exception to the home venue privilege applies when a petition is filed seeking to make DCF records public. See *Sun-Sentinel*, *supra*, at 1289, adopting the exception in cases "where a party petitions the court for an order to gain access to public records, and where the records sought are by law confidential and cannot be made public without a determination by the court, pursuant to the petition, that good cause exists for public access."

Section 39.202(2)(o), F.S., provides that access to child abuse records shall be granted to any person in the event of the child's death due to abuse, abandonment, or neglect. However, any information identifying the person reporting abuse, abandonment, or neglect, or any information that is otherwise made confidential or exempt by law shall not be released. *Id.* Section 415.107(3) (1), F.S., provides for similar release of records in the event of the death of a vulnerable adult. And see s. 39.202(4), F.S., authorizing DCF and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the department or its contracted service providers. Cf. s. 39.202(7), F.S. (duties of custodians of records made confidential under s. 39.202 to provide access as requested by legislative committee acting under s. 11.43, F.S.).

In addition, "it is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the [DCF] central abuse hotline." Section 39.2022(1), F.S. Disclosure shall be posted on the DCF public website. *Id.* Section 39.2022(2), F.S., lists the information about the child which must be posted.

b. Foster Home, Licensure and Quality Assurance Records

Records relating to licensure of foster homes, or assessing how the Department of Children and Families is carrying out its duties, including references to incidents of abuse,



abandonment, or neglect, contained in such records, do not fall within the parameters of s. 39.202, F.S. AGO 01-54. Such reports are in the nature of quality assurance reports that do not substitute for the protective investigation of child abuse, abandonment, or neglect; to the extent that such incident reports reference an occurrence of abuse, abandonment, or neglect, identifying information that reveals the identity of the victim contained in the reference should be redacted. Id. Cf. s. 409.175(16), F.S., providing an exemption for certain personal information about licensed foster parents, foster parent applicants, and their families. And see *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 637 (Fla. 5th DCA 1983), approved, 467 So. 2d 282 (Fla. 1985) (summary report compiled during a licensing investigation of a residential facility for developmentally disabled persons, subject to disclosure pursuant to statute [now found at s. 393.067(9), F.S.] providing for public access to inspection reports of such facilities).

c. Guardians ad litem and Court Monitors

Section 39.0132(4)(a)2., F.S., establishes confidentiality for specified information held by a guardian ad litem. And see s. 744.2104(2), F.S. (confidentiality of records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness); s. 744.1076(1)(b), F.S. (except as provided in the exemption, reports of court monitors or emergency court monitors which relate to the medical condition, financial affairs, or mental health of the ward are confidential); s. 744.2103 (2), F.S. (no disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law); and s. 744.3701, F.S. (court records relating to settlement of a ward or minor's claim).

d. Status of Abuse Records Held by Law Enforcement Agencies

For information regarding the status of abuse records held by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. C. 15 relating to law enforcement records.

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2-C-4 | DIRECT-SUPPORT ORGANIZATIONS

Direct-support organizations established by or pursuant to law to support the efforts of public agencies have been found to be subject to the open government laws. See AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions must comply with open government laws), 11-01 (nonprofit corporation created by municipality and described as its "fundraising arm" subject to open government laws); and 05-27 (Sunshine Law applies to Florida College System institution [formerly community college] direct-support organization as defined in s. 1004.70, F.S.). Cf. s. 20.058, F.S., requiring that citizen support organizations or direct-support organizations created or authorized by law or executive order and created, approved, or administered by an agency must submit specified information to the agency which shall then post the information on the agency's website.

However, the Legislature has enacted exemptions for information identifying donors to certain direct-support organizations. For example, the identity of donors to a direct-support organization of a district school board, and all information identifying such donors and prospective donors, are confidential and exempt from the provisions of s. 119.07(1), F.S.; that anonymity is required to be maintained in the auditor's report. See s. 1001.453(4), F.S.

More commonly, however, the statutory exemption applies only to the identity of donors who wish to remain anonymous. See, e.g., s. 570.691(6), F.S. (identity of a donor or prospective donor to the direct-support organizations authorized to support programs in the Department of Agriculture and Consumer Services "who desires to remain anonymous and all information identifying such donor or prospective donor" is confidential). Cf. s. 265.7015, F.S. (if the donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt).

The identity of donors to a university direct-support organization who wish to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report of the organization. Section 1004.28(5)(a), F.S. Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of



private funds for travel, all records of a university direct-support organization and any supplemental data requested by the Board of Governors, the Auditor General, board of trustees, and the Office of Program Policy Analysis and Government Accountability [OPPAGA] are confidential and exempt from s. 119.07(1), F.S. Section 1004.28(5)(b), F.S.

By contrast, s. 1004.70(6), F.S., provides that records of the Florida College System institution direct-support organizations other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and OPPAGA, are confidential and exempt from s. 119.07(1), F.S. See *Palm Beach Community College Foundation, Inc. v. WFTV*, 611 So. 2d 588 (Fla. 4th DCA 1993) (direct-support organization's expense records are public records subject to deletion of donor-identifying information).

For more information on exemptions for particular direct-support or citizen-support organizations, please consult Appendix D or the Index.

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2-C-5 | DOMESTIC VIOLENCE AND STALKING RECORDS

Information about clients received by the Department of Children and Families or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise, is confidential and exempt from disclosure except as provided by statute. Section 39.908, F.S. Information about the location of domestic violence centers and facilities is also confidential. Id.

A petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons. Section 741.30(3)(b), F.S. And see ss.784.046 (4) (b) (repeat violence, sexual violence or dating violence) and s. 784.0485(3)(b) (stalking). In addition, a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to a failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from disclosure. Section 119.0714(1)(k)1., F.S. Prior to July 1, 2017, the petition is exempt only upon request by an individual named in the petition as a respondent. Section 119.0714(1)(k)2., F.S. And see s. 119.0714(1)(k)3., F.S., providing confidentiality for information that can be used to identify the petitioner or respondent until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

A victim of domestic violence or aggravated stalking may file a written request, accompanied by official verification that a crime has occurred, to have his or her home or employment address, home or employment telephone number, or personal assets exempted from disclosure. Section 119.071(2)(j)1., F.S. For more information on this exemption, please refer to the discussion on page 122. And see s. 741.313(7), F.S. (personal identifying information contained in records documenting an act of domestic violence or sexual violence that is submitted to an agency by an employee seeking to take leave under the requirements of s. 741.313, F.S., is confidential and exempt; a written request for leave submitted by an employee and an agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken). See also s. 787.03(6)(c), F.S. (current address and



telephone number of the person taking the minor or incompetent person when fleeing from domestic violence and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03[6][b], F.S., are confidential and exempt from disclosure).

The addresses, telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence Program [Program] are exempt from disclosure, except as provided in the exemption. Section 741.465(1), F.S. A similar exemption is provided for the names, addresses, and telephone numbers of program participants contained in voter registration and voting records. Section 741.465(2), F.S. And see s. 741.4651, F.S. (names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from public disclosure requirements in the same manner that the names, addresses and telephone numbers of participants in the Program which are held by the Attorney General under s. 741.465, F.S, are exempt, provided that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409. F.S.).

Any information in a record created by a domestic violence fatality review team that reveals the identity of a domestic violence victim or the identity of the victim's children is confidential and exempt from disclosure. Section 741.3165, F.S.

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2-C-6 | DRAFTS AND NOTES

There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. As the Florida Supreme Court stated in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), the term "public record" means "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." Such material is a "public record" regardless of whether it is in final form or the ultimate product of an agency. *Id.*

Thus, "[i]nteroffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records in as much as they supply the final evidence of knowledge obtained in connection with the transaction of official business." 379 So. 2d at 640. See also *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore "are made in connection with official business, for memorialization and communication purposes" and are public records); and *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010) (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the "the purpose of the transcript was to perpetuate the information presented to the infractions committee" and the response "was designed to communicate information to the body that would hear the appeal within the NCAA"). Compare *Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), review denied, 919 So. 2d 436 (Fla. 2005) (unused or unvoted Florida punch card ballots from 2000 election do not constitute public records because they do not "perpetuate, communicate, or formalize knowledge," but a ballot becomes a public record once it is voted because at that point "the voted ballot, as received by the supervisor of elections in a given county, has memorialized the act of voting").

Accordingly, any agency record, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. Examples of such materials include interoffice memoranda, preliminary drafts of agency rules or

proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

In each of these cases, the fact that the records are part of a preliminary process does not remove them from the definition of "public record." When material falls within the statutory definition of "public record" in s. 119.011(12), F.S., and has been prepared to "perpetuate, communicate or formalize knowledge," the record is subject to disclosure even if the agency believes that release of the nonfinal product could be detrimental. See, e.g., *Gannett Corporation, Inc. v. Goldtrap*, 302 So. 2d 174 (Fla. 2d DCA 1974) (county's concern that premature disclosure of a report could be harmful to the county does not make the document confidential). As with other public records, only the Legislature has the authority to exempt preliminary or draft public records from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). See, e.g., s. 119.071(1)(d), F.S., providing a limited work product exemption for agency attorneys.

While the broad definition of the term "public record" ensures that the public's right of access includes preliminary and nonfinal records, the Shevin decision recognizes that not every record made or received in the course of official business is prepared to "perpetuate, communicate or formalize knowledge." Accordingly, preliminary drafts or notes prepared for the personal use of the writer may constitute mere "precursors" of public records if they are not intended to be the final evidence of the knowledge recorded. See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). And see the discussion of "attorney notes" on pages 131-132.

Thus, public employees' notes to themselves "which are designed for their own personal use in remembering certain things do not fall within the definition of 'public record.'" (e.s.) *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). Accord *Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records. See also AGO 10-55 (handwritten personal notes taken by city manager to assist in remembering matters discussed during manager's interviews of city employees are not public records "if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge");

and Inf. Op. to Trovato, June 2, 2009 (to the extent city commissioner has taken notes for his own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records). Compare *Barfield v. City of Sarasota*, 21 F. L.W. Supp 874 (Fla. 12th Cir. Ct. May 5, 2014), in which the circuit judge ruled that those portions of police officer's notes containing his research on homeless shelters became a public record when he made multiple references to them while answering questions during a presentation at a city commission meeting; however the unread portions of the notes did not become a public record because they were not disseminated.

The relevant test is whether the records have been prepared to "perpetuate, communicate, or formalize knowledge of some type." See AGO 05-23, stating that "it is only uncirculated materials that are not in and of themselves intended to serve as the final evidence of the knowledge to be recorded that fall outside of the definition of a public record." Accord AGOs 10-55 ("nonfinal documents need not be communicated to anyone in order to constitute a public record") and 04-15 (tape recordings of staff meetings made at the request of the executive director by a secretary for use in preparing minutes of the meeting are public records because "they are made at the request of the executive director as an independent record of the proceedings, and, unlike tapes or notes taken by a secretary as dictation, are intended to perpetuate the discussion at a staff meeting"). See also Inf. Op. to Yoder, November 10, 2014 (video recording of a school board meeting which was made at the direction of a school board member "appears to be a record intended to perpetuate the discussion at the meeting").

For example, in *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting. See also *Grapski v. City of Alachua*, 31 So. 3d 193, 197 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute "final work product of the [b]oard, not a preliminary draft or note"); *City of Pinellas Park, Florida v.*



Times Publishing Company, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001), available online at the open government site at myfloridalegal.com (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department"); and AGO 05-23 (handwritten notes taken by an assistant city labor attorney during her interviews with city personnel that were reviewed by the city's labor attorney, used to prepare a disciplinary action form, and then filed, constituted a public record).

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2-C-7 | EDUCATION RECORDS**a. Charter Schools**

Section 1002.33(16) (b), F.S., provides that charter schools are subject to the Public Records Act and the Sunshine Law. The open government laws apply regardless of whether the charter school operates as a public or private entity. AGO 98-48. The records and meetings of a not-for-profit corporation granted charter school status are subject to the requirements of Ch. 119, F.S., and s. 286.011, F.S., even though the charter school has not yet opened its doors to students. AGO 01-23. And see AGO 2010-14 (records of team created by charter school to review personnel decisions subject to Ch. 119, F.S.).

b. Student Records

Public access to student records is limited by statute. In 2009, the Legislature amended the state statutes relating to student records to incorporate the federal Family Education Rights and Privacy Act (FERPA). Section 1002.221(1), F.S., provides that "[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt" from public disclosure and may be released only as authorized in the exemption. "Education records" are defined by FERPA to mean "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. s. 1232g(a)(4) (A). Cf. AGO 10-04 (school board meeting at which student records may be discussed may not be closed to the public in the absence of a statutory exemption from the Sunshine Law; however, "school board should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved...."). Compare s. 1003.57(1)(c), F.S., providing an exemption from the Sunshine Law for hearings on exceptional student identification, evaluation, and eligibility determination; and s. 1006.07(1)(a), F.S. (student expulsion hearings exempted).

Public postsecondary educational institutions are also required to comply with FERPA with respect to the education records of students. Section 1002.225(2), F.S. Section



1006.52(1), F.S., authorizes a public postsecondary educational institution to prescribe the content and custody of records the institution maintains on its students and applicants for admission. A student's education records and applicant records are confidential and exempt. *Id.* See *Knight News, Inc. v. University of Central Florida*, 200 So. 3d 125, 128 (Fla. 5th DCA 2016) (personally identifiable information contained within records regarding alleged hazing incidents qualifies as confidential student disciplinary records; however, the names of student government officers charged with malfeasance in the performance of student government duties or alleged to have engaged in misconduct with regard to their election or appointment to their position are not confidential under FERPA because "given the statutory scheme [relating to university student government officers] student government officers know or reasonably should know" that they could be disciplined for misconduct in connection with their student government duties).

In *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010), the court construed FERPA and the 2009 amendments to the Florida Statutes. Recognizing that under FERPA a record "qualifies as an educational record only if it 'directly' relates to a student," the court found that a transcript of an NCAA hearing and an NCAA committee response pertained to allegations of misconduct by the university athletic department, and only tangentially related to students. Therefore, since the transcript and the response had been redacted to remove student-identifying information and thus did not disclose education records, they were not exempt from disclosure. And see *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted email which criticized instructor's classroom performance constituted an exempt education record). Compare *WFTV v. School Board of Seminole County, Florida*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied, 892 So. 2d 1015 (Fla. 2004), concluding that under prior student confidentiality laws (which did not incorporate FERPA), a school bus surveillance videotape was a confidential student record and could not be released to the media even with student-identifying information redacted).

In AGO 01-64 the Attorney General, in interpreting the former statutes, stated that a felony complaint/arrest affidavit



created and maintained by school police officers for a juvenile or adult who is a student in the public schools is a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release. See now 20 U.S.C. s. 1232g(a)(4)(B)(ii) excluding "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement" from the definition of "education records."

c. Children in Government-Sponsored Recreation Programs

Section 119.071(5)(c), F.S., exempts information that would identify or locate a child or the parent or guardian of a child, participating in a government-sponsored recreation program. A government-sponsored recreation program means "a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs." Id.

d. School System Security

Please see page 157.

e. Testing Materials

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. See, e.g., s. 1008.23(1)(2), F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes). See AGO 09-35, concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S. Cf. s. 1008.24(4)(b), F.S. (identity of a school or postsecondary educational institution, personal identifying information of personnel of a school district or postsecondary educational institution, or specific allegations of misconduct obtained or reported in connection with an investigation of a testing impropriety conducted by the Department of Education are confidential and exempt from disclosure until the investigation is concluded or becomes inactive).



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2-C-8 | ELECTION RECORDS**a. Ballots**

Election records are generally open to public inspection. An individual or group is entitled to inspect the ballots and may take notes regarding the number of votes cast. AGO 93-48. See also *Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), review denied, 919 So. 2d 436 (Fla. 2005) (voted ballots are public records because they have "memorialized the act of voting"). Cf. *Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016), stating that the supervisor of elections was not required to charge the hourly rate of the lowest paid person capable of providing ballots for inspection because s. 119.07(4)(d), F.S., authorizes the agency to impose a reasonable charge based on labor costs "actually incurred by the agency or attributable to the agency" when extensive clerical or supervisory assistance is required).

Section 119.07(5), F.S., prohibits any person other than the supervisor of elections or the supervisor's employees from touching the ballots. And see s. 101.572, F.S. (no persons other than the supervisor, supervisor's employees, or the county canvassing board shall handle any official ballot or ballot card). However, this restriction does not prohibit the supervisor from producing copies of optically scanned ballots which were cast in an election in response to a public records request. AGO 04-11. And see AGO 01-37.

Information regarding requests for vote-by-mail ballots that is recorded by the supervisor of elections pursuant to s. 101.62(3), F.S., is confidential and exempt and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only. Section 101.62(3), F.S.

b. Voter Registration and Voter Records

Section 97.0585(1), F.S., states that the following information is confidential and exempt from public disclosure requirements and may be used only for purposes of voter registration: declinations to register to vote; information relating to the place where a person registered to vote or updated a voter registration; the social security number, driver license number, and the Florida identification number of a voter registration applicant or voter; and all



information concerning preregistered voter registration applicants who are 16 or 17 years old. The signature of a voter registration applicant or a voter is exempt from copying requirements. Section 97.0585(2), F.S.. See also ss. 741.465(2), F.S. (identifying information concerning participants in the Office of the Attorney General Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records is exempt); and 741.4651, F.S. (exemption for identifying information of stalking victims who have filed a sworn statement of stalking with the Office of the Attorney General and otherwise comply with the procedures set forth in ss. 741.401-741.409, F.S.). And see AGO 04-18 (specified officers and employees who are authorized to file a request for exempt status of certain personal information pursuant s. 119.071(4)(d)3., F.S., may request that the supervisor of elections maintain the exempt status of such information contained in petitions or campaign papers).

Section 98.075(2)(b), F.S., allows the Department of State to join a nongovernmental entity composed of state and District of Columbia election officials whose sole purpose is to share and exchange information in order to verify voter registration information. Information received by the department from another state or the District of Columbia which is confidential or exempt pursuant to the laws of that state or the District of Columbia is exempt from disclosure. Section 98.075(2)(c), F.S.

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2-C-9 | ELECTRONIC AND COMPUTER RECORDS**a. Electronic Databases and Files**

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet...." *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), review denied, 431 So. 2d 988 (Fla. 1983). And see *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form); AGO 98-54 (application and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records); AGO 91-61 (agency must provide copy of computer disk in response to Ch. 119 request); and AGO 85-03 (computer tape subject to disclosure).

Thus, information such as electronic calendars, databases, and word processing files stored in agency computers, can all constitute public records because records made or received in the Course of official business and intended to perpetuate, communicate or formalize knowledge of some type, fall within the scope of Ch. 119, F.S. AGO 89-39. Compare AGO 85-87 (to the extent that "machine-readable intermediate files" may be intended to "communicate" knowledge, any such communication takes place completely within the data processing equipment and in such form as to render any inspection pursuant to Ch. 119, F.S., unintelligible and, except perhaps to the computer itself, meaningless; therefore, these files are analogous to notes used to prepare some other documentary material, and are not public records). And see *Grapski v. Machen*, No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), affirmed per curiam, 949 So. 2d 202 (Fla. 1st DCA 2007), available online in the Cases database at the open government site at myfloridalegal.com (spam or bulk mail received by a public agency does not necessarily constitute a public record).

Moreover, the definition of "public records" specifically includes "data processing software" and establishes that a record made or received in connection with official business is a public record, regardless of physical form,



characteristics, "or means of transmission." See s. 119.011(12), F.S. "Automation of public records must not erode the right of access to [public records]." Section 119.01(2)(a), F.S.

Accordingly, electronic public records are governed by the same rule as written documents and other public records--the records are subject to public disclosure unless a statutory exemption exists which removes the records from disclosure. Cf. AGO 90-04, stating that a county official is not authorized to assign the county's right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement compromising a lawsuit against the county. And see the discussion on pages 132-134 noting that in evaluating whether a public official's records were made or received in the course of official business for purposes of Ch. 119, the determining factor is the nature of the record, and not whether the record is located in a private or a government computer or communications device.

b. Consideration of Public Access in Design of Electronic Recordkeeping System

When an agency is designing or acquiring an electronic recordkeeping system, the agency must consider whether the proposed system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange. Section 119.01(2)(b), F.S. Cf. Inf. Op. to Moore, October 19, 1993, noting that an agency considering the acquisition of computer software should be responsive to the need for preserving public access to the information through use of the computer's software and that "[t]he design and development of the software, therefore, should ensure that the system has the capability of redacting confidential or exempt information when a public records request is made."

Similarly, an agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic recordkeeping system used by the agency. Section 119.01(2)(c), F.S. And see s. 287.042(3)(h), F.S. (Department of Management Services responsible for development of procedures to be used by state

agencies when procuring information technology commodities and contractual services that ensure compliance with public records and records retention requirements). Cf. Rule 1B-26.003, F.A.C., adopted by the Department of State and providing standards for electronic recordkeeping.

Providing access to public records "is a duty of each agency." Section 119.01(1), F.S. Section 119.01(2)(a), F.S., states that "[a]utomation of public records must not erode the right of access to those records." A circuit judge found that an agency violated both policies when it established an automated anti-SPAM system that quarantined the requester's "entirely legitimate public records request" and allowed it to be deleted and purged a week later, because the agency "altogether failed to establish any procedural safeguards to ensure that legitimate public records requests were not inadvertently sent to SPAM." *Bracci v. School Board of Lee County*, No. 20-CA-5205 (Fla. 20th Cir. Ct. January 12, 2021), available online in the Cases database at the open government site at myfloridalegal.com.

c. E-Mail

E-mail messages made or received by agency officers and employees in connection with official business are public records and subject to disclosure in the absence of an exemption. AGOs 96-34 and 01-20. See *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that "electronic communications, such as e-mail, are covered [by the Public Records Act] just like communications on paper." Cf. s. 668.6076, F.S., requiring agencies that operate a website and use electronic mail to post the following statement in a conspicuous location on the agency website: "Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or "blind" recipients and their e-mail addresses. AGO 07-14. Cf. *Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4th DCA 2011) (affirming a trial court order finding



that a list of recipients of a personal e-mail sent by mayor from her personal computer was not a public record).

Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records. See s. 257.36(6), F.S., stating that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services (division) of the Department of State. Thus, an e-mail communication of "factual background information" from one city council member to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. AGO 01-20.

d. Social Media Postings

The Attorney General's Office has stated that the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S., although in any given instance, the determination would have to be made based upon the definition of "public record" contained in s. 119.011(12), F.S. AGO 09-19. To the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established in accordance with s. 257.36(6), F.S. Id. And see AGO 08-07 (city council members who post comments and emails relating to the transaction of city business on a privately owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

The determination as to whether a list or record of accounts which have been blocked from posting to or accessing an elected official's personal Twitter feed is a public record involves mixed questions of law and fact which cannot be resolved by the Attorney General's Office. Inf. Op. to Shalley, June 1, 2016. However, "if the tweets the public official is sending are public records [because they were sent in connection with the transaction of official business] then a list of blocked accounts, prepared in connection with those public records 'tweets,' could well be determined by a court to be a public record." Id. Cf. Knight First Amendment Institute v. Trump, No. 18-1691 (2d Cir. July 9, 2019) (public



official engaged in unconstitutional viewpoint discrimination by blocking certain users from access to his Twitter account, which is otherwise open to the public at large and "used for all manner of official duties," because he disagreed with their speech)

e. Text Messages

A public official or employee's use of a private cell phone to conduct public business via text messaging "can create an electronic written public record subject to disclosure" if the text message is "prepared, owned, used, or retained... within the scope of his or her employment or agency." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040-1041 (Fla. 4th DCA 2018). Accord *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022), noting that a "city commissioner's text messages may be a public record," although a private communication by a municipal official "falls outside the definition of public record." For more information on personal records created and or received by public officials on government or private devices, please see the discussion of that topic on page 134.

In order to comply with the requirements of the Public Records Act, "the governmental entity must proceed as it relates to text messaging no differently than it would when responding to a request for written documents and other public records in the entity's possession—such as emails—by reviewing each record, determining if some or all are exempted from production, and disclosing the unprotected records to the requester." *O'Boyle v. Town of Gulf Stream*, at 1041. And see the discussion on page 164 regarding the entity's responsibility to conduct a reasonable search to locate text messages that have been requested from the governmental entity, including those located on private accounts or devices.

The retention periods for text messages and other electronic messages or communications "are determined by the content, nature, and purpose of the records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside or the method by which they are transmitted." See General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at dos.myflorida.com/library-archives. Stated another way, it is



the content, nature and purpose of the electronic communication that determines how long it is retained, not the technology that is used to send the message. See also Inf. Op. to Browning, March 17, 2010, advising that the same[retention] rules that apply to e-mail should be considered for electronic communications including SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies.

f. Cybersecurity

Please see the discussion on that topic on pages 156-157.

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2-C-10 | EMERGENCY RECORDS**a. Emergency "911" Records**

Section 365.171(12)(a), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from s. 119.07(1), F.S. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption. Section 365.171(12)(b), F.S.

The exemption applies only to the name, address, telephone number or personal information about or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. Section 365.171(12)(a), F.S. See AGO 93-60. There is no clear indication that the Legislature intended to include the sound of a person's voice as information protected from disclosure. AGO 15-01. Moreover, identifying information obtained or created independently of the 911 call, for example from a criminal investigation or offense report created as a result of such investigation, is not exempt under s. 365.171(12)(a), F.S. AGO 11-27.

A tape recording of a "911" call is a public record which is subject to disclosure after the deletion of the exempt information. AGO 93-60. This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. AGO 95-48. See also Inf. Op. to Fernex, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).



Moreover, an audio recording that records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information on this exemption, please refer to the discussion on page 125.

Building plans, blueprints and related records which depict the structural elements of 911, E911 or public safety radio communication system infrastructure owned or operated by an agency, are exempt from disclosure. Section 119.071(3)(e)1.a., F.S. Geographical maps indicating actual or proposed locations, including towers, antennae, equipment, and facilities are also exempt. Section 119.071(3)(e)1.b., F.S.

b. Emergency Evacuation Plans and Special Needs Registry

Section 119.071(3)(a), F.S., provides an exemption from disclosure for a security or fire-safety system plan of a private or public entity that is held by an agency. The term "security or fire-safety system plan" includes emergency evacuation plans and sheltering arrangements. And see s. 119.071(2)(d), F.S., providing an exemption from disclosure for "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, chapter 23 [Florida Mutual Aid Act], 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, F.S.; and s. 395.1056, F.S., providing an exemption for those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

Section 252.355(1), F.S., states that the Division of Emergency Management, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs (i.e., persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities), located within the jurisdiction of the local agency. Records relating to the registration of persons with special needs are confidential and exempt, except such information is available to other emergency response



agencies, as determined by the local emergency management director. Section 252.355(4), F.S. Local law enforcement agencies shall be given complete shelter roster information upon request. Id.

c. Emergency Medical Services Records

Please refer to the discussion of this topic found on pages 96.

d. Emergency Notification

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency is exempt from disclosure requirements. Section 119.071(5)(j)1., F.S. The e-mail addresses and corresponding home, school, and other "watched addresses of concern" provided for participation in the Florida Department of Law Enforcement Offender Alert System come within the scope of this exemption. AGO 11-16. And see s. 119.0712(2)(d)1. and 2., F.S. (emergency contact information contained in a motor vehicle record issued by the Department of Highway Safety and Motor Vehicles is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency or to a receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to cited statutes for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts).

e. Emergency Planning Information Furnished to Division of Emergency Management

The Division of Emergency Management (Division) manages a statewide public awareness program which encourages individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters. See s. 2, Ch. 14-188, Laws of Florida. Any information furnished by a person or a business to the Division for the purpose of being provided assistance with emergency planning is exempt. Section 252.905, F.S.

f. Emergency Shelter and Disaster Recovery Assistance

The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and



held by the agency, as defined in s. 119.011, F.S., that provided the emergency shelter is exempt. Section 252.385(5), F.S.

Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt. Section 119.071(5)(f)1.b., F.S. The exemption authorizes access under specified conditions. Section 119.071(5)(f)2. and 3., F.S.

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2-C-11 | FINANCIAL RECORDS

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. See AGO 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

a. Audit Reports**(1) Auditor General audits**

The audit report prepared by the Auditor General is a public record once finalized. Section 11.45(4)(c), F.S. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. Id. And see AGO 79-75 ("the term 'audit work papers and notes' should be construed narrowly and limited to such 'raw data' as is commonly considered to constitute the work papers of an accountant"). Cf. s. 11.51(4), F.S. (work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product are exempt from disclosure).

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. The list of audit findings is a public record. AGO 79-75.

(2) Local government audits

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(b), F.S. The audit becomes final when the audit report is presented to the unit of local government; until the audit becomes final, the audit workpapers and notes related to such audit report are confidential. Id.



Thus, a draft audit report of a county legal department prepared by the clerk of court, acting in her capacity as county auditor, did not become subject to disclosure when the clerk submitted copies of her draft report to the county administrator for review and response. *Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). According to the exemption, the report would become "final," and hence subject to disclosure, when presented to the county commission. *Id.*

Similarly, draft audit reports relating to city towing companies did not become subject to disclosure even though the towing companies, who had reviewed the reports pursuant to city policy, shared the reports with a news organization which subsequently published an article about them. The court said its decision was compelled by the plain language of the statute, concluding that because the draft audit reports were not final, they were not subject to disclosure. *City of Miami Beach v Miami New Times, LLC*, 314 So. 3d 562 (Fla. 3d DCA 2020). And see *Rushing v. Barfield*, No. 2011-CA-5864-NC (Fla. 12th Cir. Ct. August 4, 2011), per curiam affirmed, 83 So. 3d 718 (Fla. 2d DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (even though an audit has been completed with regard to some matters, clerk authorized to redact those portions of workpapers and notes relating to additional matters under investigation until the audit relating to the additional matters is concluded).

The term "internal auditor" is not defined for purposes of this exemption. However, the term would appear to encompass an official within county government who is responsible under the county code for conducting an audit. AGO 99-07. Compare AGO 04-33 (exemption does not apply to audit of guardianship files prepared by clerk of court because that audit "is not an internal audit performed by or on behalf of any of the specified units of local government").

(3) State agency inspector general audits

Section 20.055(2), F.S., establishes the Office of Inspector General in each state agency. Pursuant to s. 20.055(6), F.S., the inspector general is required to



conduct audits of the agency and prepare audit reports of the findings. Such audit reports and workpapers are public records to the extent that they do not include information which has been made confidential and exempt from disclosure. Section 20.055(6)(b), F.S.

b. Bids, Proposals and Financial Statements

Section 119.071(1)(b)2., F.S., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening "the bids, proposals, or final replies," whichever is earlier. Cf. s. 255.0518, F.S., providing that notwithstanding s. 119.071(1)(b), F.S., agencies receiving sealed bids pursuant to a competitive solicitation for construction or repairs of a public building or public work, must open the bids at a public meeting conducted in compliance with the Sunshine Law, and must also announce bidder and price information at that meeting.

The term "competitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S. And see s. 286.0113(2)(c), F.S., providing an exemption for the recording of, and records presented at, an exempt meeting held pursuant to s. 286.0113(2)(b), F.S. For more information on this exemption, please refer to the discussion on page 35-36.

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works

project is exempt from disclosure requirements. Section 119.071(1)(c), F.S. See also s. 119.0713(3), F.S., limiting access to materials used by municipal utilities to prepare bids; s. 339.55(10), F.S., providing an exemption for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank; and s. 337.168, F.S., providing restrictions on disclosure of Department of Transportation cost estimates, persons requesting bid packages, and the bid analysis and monitoring system.

c. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); and *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974). Accord *Inf. Op. to Pietrodangelo*, Nov. 29, 1972 (financial operating budget of athletic department of state university constitutes a public record). Cf. *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), holding that the preponderant interest in allowing public participation in the budget process justified the inclusion of an agency's internal budget committee within the provisions of the Government in the Sunshine Law.

The exemption afforded by s. 447.605(3), F.S., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden v. Bennett*, *supra*. See also AGO 92-56 (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

d. Economic Development Records

(1) Business location or expansion plans

If a private entity requests in writing before an economic incentive agreement is signed that an economic



development agency maintain the confidentiality of information concerning the entity's interest in or plans to locate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first. Section 288.075(2)(a)1., F.S. Confidentiality may be extended for up to an additional 12 months upon the written request of the private entity if the agency finds that the private entity is still actively considering locating or expanding its business activities in Florida. Section 288.075(2)(a)2., F.S. If a final project order for a signed economic development agreement is issued, then the information remains confidential for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality specified in s. 288.075(2)(a)1. or s. 288.075(2)(a)2., F.S. And see s. 288.075(2)(b), F.S., restricting public officials from entering into binding agreements with the private entity requesting confidentiality until 90 days after the information has been made public, unless certain conditions are met.

The term "economic development agency" means the state Department of Economic Opportunity, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority. Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency. The term also includes private persons or agencies authorized by the state, a county or a municipality to promote the general business interests of the state or that municipality or county. Section 288.075(1)(a), F.S.

The Legislature's designation of those entities which are considered economic development agencies for purposes of s. 288.075, F.S., precludes any other entities from falling under the definition. See AGO 12-36 (St. Augustine-St. Johns County Airport Authority is not an "economic development agency" as defined in s. 288.075, F.S.). Cf. Inf. to Rooney, June 8, 2011 (if by amendment of the county charter, the voters made the county commission a part of the county economic development agency by placing the executive director of the agency under the direct supervision of the county commission, then the provisions of s. 288.075, F.S., would apply to the county commission).

A written request for confidentiality under s. 288.075(2), F.S., may constitute or contain information required to be held confidential under that statute; however, such a determination must be made by the custodian on a case-by-case basis as to whether a particular record or portion of a record falls within the scope of the exemption. AGO 07-15. The section, however, may be cited by the records custodian as statutory authority for withholding information from public disclosure without violating the required confidentiality provisions of the statute. Id. Cf. AGO 80-78 (county industrial development authority permitted to withhold access only to those records "clearly falling" within the exemption provided in s. 288.075; "policy considerations" do not justify nondisclosure of public records).

Development plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer considering expansion or relocation within the city appear to come within the scope of the exemption. AGO 04-19. However, the burden is on the economic development agency "to carefully and in good faith distinguish between those documents clearly covered by the exemption and those not covered." Id.

Trade secrets, as defined in s. 688.002, F.S., contained in the records held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. Proprietary confidential business

information held by an economic development agency is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. Section 288.075(4), F.S. Federal employer identification numbers, reemployment assistance account numbers, or Florida sales tax registration numbers held by an economic development agency are confidential and exempt. Section 288.075(5), F.S. In addition, certain information held pursuant to the administration of an economic incentive program is confidential and exempt for limited periods as specified in the exemption. Section 288.075(6), F.S. And see s. 288.075(7), F.S. (tax returns, financial information, and credit history information held by a state or federally funded small business loan program).

(2) Convention center booking business records

Booking business records of a public convention center, sports facility, or auditorium are exempt from public disclosure. Section 255.047(2), F.S. The statute defines "booking business records" to include "client calendars, client lists, exhibitor lists, and marketing files." Section 255.047(1)(a), F.S. The term does not include "contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event." *Id.* And see s. 125.0104(9)(d)1., F.S. (providing an exemption for information given to a county tourism promotion agency, which, if released, would reveal the identity of those who provide information in response to a sales promotion, advertisement, or research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data).

e. Ownership Records for Registered Public Obligations

Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. Section 279.11, F.S.



f. Personal Financial Records

In the absence of a statutory exemption, financial information prepared or received by an agency is subject to Ch. 119, F.S. See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure). See also *Inf. Op. to Lovelace*, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records).

(1) Bank Account, Debit and Credit Card Numbers

Bank account numbers, and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), F.S. See also s. 119.0714(1)(j), (2)(e) and 3(b), F.S., regarding confidentiality of bank account numbers and debit, charge, and credit card numbers contained in court and official records.

(2) Consumer Financial Information

There are statutes which exempt consumer financial information received by certain agencies. For example, s. 624.23, F.S., provides confidentiality for personal financial information held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code. See *State, Department of Financial Services v. Danahy & Murray*, 246 So. 3d 466 (Fla. 1st DCA 2018), upholding the constitutionality of the statute. See also s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); s. 627.351(6)(x)1., F.S. (claims and underwriting files of the Citizens Property Insurance Corporation, except as provided in the exemption); s. 119.071(5)(f), F.S. (health or property insurance information provided by applicants or participants in government housing assistance programs); and s. 655.057(1)(c), F.S. (personal financial information

contained in investigation records of the Office of Financial Regulation).

(3) Financial Information Submitted by State Licensure Applicants

In the absence of statutory exemption, financial information in a licensing file is subject to disclosure. See AGO 04-16. However, the Legislature has enacted exemptions for financial information held by certain licensing agencies. For example, credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers and mortgage lenders are confidential. Section 494.00125(3) F.S. Financial information submitted by license applicants to the Department of Business and Professional Regulation is also confidential. Section 455.229(1), F.S. And see s. 456.014(1), F.S. (Department of Health license applicants). Cf. *Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court finding that identities of investors and partners listed in applications to dispense medical cannabis were not confidential trade secrets). For more information on disclosure issues relating to trade secrets, please refer to the discussion of that topic in pages 159-160.

(4) Temporary Cash Assistance Program Participant

Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant is confidential. Section 414.295(1), F.S.

(5) Toll Payment Personal Identifying Information

Section 338.155(6), F.S. provides an exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities.

(6) Utility Payment Records

Agency records of payments for utility services are subject to disclosure. See AGOs 88-57 (county records of payments made by individuals for waste collection services are public records), and 92-09 (customer delinquency information held by a utilities commission is subject to disclosure). Cf. s. 119.0713(5)(a), F.S., providing an exemption for customer meter-derived data and billing information in increments less than one billing cycle.

g. Taxpayer Records

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. See, e.g., s. 213.053(2)(a), F.S. (all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential except for official purposes and exempt from s. 119.07[1], F.S.); s. 213.21(3), F.S. (records of compromises of taxpayer liability not subject to disclosure); and s. 213.27(6), F.S. (confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from public disclosure and such debt collection or auditing agencies are bound by the same confidentiality requirements as the department). Cf. *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns submitted by housing finance authority members to state banking agency as part of the authority's application to organize a bank are subject to disclosure).

In addition, s. 193.074, F.S., provides for confidentiality of certain taxpayer information. In light of the position taken by the Department of Revenue that its form entitled "Original Application for Ad Valorem Tax Exemption" constitutes a "return," such form should be treated as a "return" that is confidential pursuant to s. 193.074, F.S. AGO 05-04. Accord AGO 95-07. And see *NYT Management Services, Inc. v. Florida Department of Revenue*, No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006), available online in the Cases database at the open government site at myfloridalegal.com (declarations or written statements filed with the Department of Revenue pursuant to the state's revenue laws would be a return and thus confidential under s. 193.074, F.S.).

A taxpayer's e-mail address held by a tax collector for purpose of sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices, as provided in cited statutes, is exempt from public disclosure requirements. Section 197.3225, F.S. Cf. s. 288.075(7), F.S. (tax returns held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from public disclosure).

However, taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute. AGO 01-74. Cf. Inf. Op. to Echeverri, April 30, 2010 (while property appraiser may use confidential records submitted to the value adjustment board by the taxpayer, it is not clear whether property appraiser may independently submit confidential material to the board in the absence of a taxpayer's submission although board may order production of confidential records). Similarly, absent a specific statutory exemption for assessment rolls and public information cards, such documents made or received by the property appraiser are public records subject to the Public Records Act, regardless of the confidentiality of a return that may contain information used in their creation. AGO 05-04.

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2-C-12 | FIREARMS RECORDS

Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure requirements. Section 790.0601(1), F.S. The same information is also confidential when held by a tax collector appointed by the Department. Sections 790.0601(2), and 790.0625(4), F.S.

Information made confidential by s. 790.0601, F.S., shall be disclosed with the express written consent of the applicant or licensee or his or her legally authorized representative, by court order upon a showing of good cause, or upon request by a law enforcement agency in connection with the performance of lawful duties. Section 790.0601(3), F.S. Cf. *Times Publishing Company v. City of Pensacola*, No. 2002-2053 (Fla. 1st Cir. Ct. November 13, 2002), per curiam affirmed, 869 So. 2d 546 (Fla. 1st DCA 2004), available online in the Cases database at the open government site at myfloridalegal.com, concluding that police department records of weapons assigned to law enforcement officers and described as "specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel" were exempt from disclosure under s. 119.071(3)(a), F.S., relating to security system plans and terrorist threat assessments, and the exemption for surveillance personnel, techniques, and procedures, now found at s. 119.071(2)(d), F.S.

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2-C-13 | HOSPITAL AND MEDICAL RECORDS**a. Communicable or Infectious Disease Reports**

A number of exemptions exist for communicable or infectious disease reports. See, e.g., s. 381.0031(6), F.S. (information submitted in public health reports to Department of Health is confidential and is to be made public only when necessary to public health); s. 384.29, F.S. (sexually transmissible diseases). See *Ocala Star-Banner v. State*, 697 So. 2d 1317 (Fla. 5th DCA 1997) (upholding court order sealing portions of a battery prosecution case file pertaining to transmission of sexually transmissible diseases to victims due to s. 384.29, F.S., confidentiality requirements). However, notwithstanding any other provision of law to the contrary, the Department of Health, the Department of Children and Families, and the Agency for Persons with Disabilities may share confidential information on any individual who is or has been the subject of a program within the jurisdiction of each agency. Section 402.115, F.S. The shared information remains confidential or exempt as provided by law. *Id.* See AGO 98-52.

Results of screenings for sexually transmissible diseases conducted by the Department of Health in accordance with s. 384.287, F.S., may be released only to those persons specified in the exemption. Section 384.287(5), F.S.

Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease must be done in a manner to protect the confidentiality of patient information and shall not include the patient's name. Section 395.1025, F.S.

There are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute. See ss. 381.004, and 384.287(6), F.S. Any person who violates the confidentiality provisions of s. 381.004, F.S., and s. 951.27, F.S., is guilty of a first degree misdemeanor. Section 381.004(5)(b), F.S. And see s. 381.004(5)(c), F.S., establishing felony penalties for disclosure in certain circumstances. Thus, information received by the clerk of court indicating that an individual has complied with an order to be tested for HIV and the attendant test results "would appear to be confidential and should be maintained in that status." AGO 00-54. Cf. Florida



Department of Corrections v. Abril, 969 So. 2d 201 (Fla. 2007) (an entity that negligently violates a patient's right of confidentiality in disclosing the results of HIV testing may be held responsible in a negligence action).

Results of HIV and hepatitis tests performed on persons charged with certain offenses may not be disclosed except as authorized in the exemption. Section 960.003, F.S. See also s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates as provided in statute).

b. Hospital Records

(1) Public hospitals

Like other governmental agency records, public hospital records are subject to disclosure in the absence of a statutory exemption. For example, the court in Tribune Company v. Hardee Memorial Hospital, No. CA 91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com, held that a settlement agreement entered in a lawsuit against the public hospital alleging that the hospital had swapped babies was a public record. The court held that the agreement was subject to disclosure despite a confidentiality provision contained within the agreement and claims by the hospital that it constituted work product. Cf. Bert Fish Foundation, Inc. v. Southeast Volusia Hospital District, No. 10-20801-CINS (Fla. 7th Cir. Ct. December 22, 2010), available online in the Cases database at the open government site at myfloridalegal.com (governing boards of hospital district and medical center violated the Sunshine Law when they held numerous closed meetings to discuss an affiliation or merger with a healthcare corporation). For information on exemptions applicable to public hospitals, please refer to Appendix D and the Index. Cf. AGO 14-10, noting that an exemption in s. 395.3035(5), F.S., for certain records and meetings relating to a "strategic plan" for operation of a hospital must be narrowly construed and would not apply to an evaluation conducted pursuant to s. 155.40(5), F.S., for purposes of the sale or lease of a public hospital.



(2) Private hospitals/private organizations operating public hospitals

A private organization leasing the facilities of a public hospital is acting on behalf of a public agency and thus constitutes an agency subject to open records requirements in the absence of statutory exemption. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 1999).

Section 395.3036, F.S., however, provides that records of a private entity that leases a public hospital or other public health care facility are confidential and exempt from disclosure when the public lessor complies with the public finance accountability provisions of s. 155.40(18), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of five criteria set forth in the exemption. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000) (nonprofit corporation leasing hospital from hospital district). And see *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), upholding the constitutionality of the exemption. Cf. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006) (private corporation that purchased hospital from public hospital authority not subject to Public Records Act); and s. 155.40(21), F.S., describing and construing the term "complete sale" as applied to a purchase of a public hospital by a private entity.

c. Patient and Clinical Records

(1) Patient and clinical records generally

Patient records are generally protected from disclosure. For example, patient records in hospitals and surgical facilities licensed under Ch. 395, F.S., are confidential and may not be disclosed without the consent of the patient, or the patient's legal representative, except as provided in the statute. Section 395.3025(4), (5), (7) and (8), F.S. And see s. 119.0712(1), F.S. (personal identifying information contained in records relating to an individual's

personal health or eligibility for health-related services held by the Department of Health); and s. 400.022(1) (m), F.S. (nursing home residents' medical and personal records).

Patient clinical records are also protected. See, e.g., s. 393.13(4)(i)1., F.S. (central client records of persons with developmental disabilities); s. 394.4615(1), F.S. (clinical records of persons subject to "The Baker Act"); and s. 397.501(7), F.S. (individuals receiving services from substance abuse service providers). And see ss. 397.6760(1), F.S. (petitions for involuntary assessment and stabilization and related court records filed with a court under Part V of Ch. 397, F.S.[substance abuse]); and 394.464(1) (petitions for voluntary and involuntary admission for mental health treatment, courts orders and related records filed with or by a court under the Baker Act). Cf. s. 381.987, F.S. (patient or caregiver identifying information in the medical marijuana use registry).

(2) Disclosure of patient records

Patient medical records made by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment without written authorization, except as provided by ss. 440.13(4)(c) and 456.057, F.S. Section 456.057(7)(a), F.S. See *State v. Johnson*, 814 So. 2d 390 (Fla. 2002) (state attorney's subpoena power under s. 27.04, F.S., cannot override notice requirements of s. 395.3025[4][d], F.S., which provides for disclosure of confidential patient records upon issuance of subpoena and upon proper notice to the patient or the patient's legal representative). Cf. s. 408.051(3), F.S., permitting a health care provider to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), F.S., when the health care provider is unable to obtain the patient's consent or the consent of the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.

The recipient of patient records, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. See ss. 395.3025(7) (hospital patient records) and 456.057(11), F.S. (health care practitioner patient records). Thus, predeath medical records in the possession of the medical examiner are not subject to public inspection. *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.

Similarly, clinical records maintain their confidentiality even when disclosed to another agency such as the clerk of the circuit court. AGO 91-10. And see *Sarasota Herald-Tribune v. Department of Children and Families*, No. 2001-CA-002445 (Fla. 2d Cir. Ct. April 8, 2002), available online in the Cases database at the open government site at myfloridalegal.com (confidentiality of clinical record is maintained even though Department of Children and Families may have filed portions of the records in court proceedings throughout the state; department has no authority to waive confidentiality of clinical records). Cf. AGO 01-69 (documents submitted to the statewide provider and managed care organization claim dispute resolution program pursuant to s. 408.7057, F.S., found to be subject to disclosure after redaction of patient-identifying information).

d. Emergency Medical Services

With limited exceptions, s. 401.30(4), F.S., provides, in relevant part, that "[r]ecords of emergency calls which contain patient examination or treatment information are confidential and exempt from the provisions of s. 119.07(1) and may not be disclosed without the consent of the person to whom they pertain." Such records may be released only in certain circumstances and only to the persons and entities specified in the statute. AGO 86-97. Thus, a city commissioner is not authorized to review records of an emergency call by the city's fire-rescue department when those records contain

patient examination and treatment information, except with the consent of the patient. AGO 04-09. See *Lee County v. State Farm Mutual Automobile Insurance Company*, 634 So. 2d 250 (Fla. 2d DCA 1994), upholding the county's right to require the patient's notarized signature on all release forms, to ensure that these confidential records are not improperly released. And see AGO 09-30 (entire record of emergency call containing patient examination and treatment information which is maintained as required by s. 401.30[1], F.S., is confidential and exempt; reports containing statistical data, required by the Department of Health, are public records and must be made available for inspection and copying following redaction of any patient-identifying information).

However, s. 401.30(4), is not violated by the city attorney, or an attorney under contract to the city, and other city officials having access to the city fire-rescue department's records of emergency calls that contain patient information when such access is granted to such individuals in carrying out their official duties to advise and defend, or assess the liability of, the city in a possible or anticipated claim against the city arising out of the provision of such care. AGO 95-75. And see AGO 08-20 (s. 401.30[4], F.S., permits emergency medical services transportation licensee to release records of emergency calls including patient's name, address, and pertinent medical information to local law enforcement agency that does not provide regulatory or supervisory responsibility over licensee).

e. Hospital Employees

Section 395.3025(10), F.S., establishes that the home addresses, telephone numbers, and photographs of hospital or surgical center employees who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt from disclosure requirements. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family. Section 395.3025(11), F.S.



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2-C-14 | INVESTIGATIVE RECORDS OF NON-LAW ENFORCEMENT AGENCIES**a. Investigative Records Generally**

In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to Ch. 119, F.S. See *State ex rel. Veale v. City of Boca Raton*, 353 So.2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department is a public record). See also *Caswell v. Manhattan Fire and Marine Insurance Company*, 399 F.2d 417 (5th Cir. 1968) (ordering that certain investigative records of the state insurance agency be produced for inspection under Ch. 119, F.S.). Accord AGO 91-75 (documents containing information compiled by school board employees during an investigation of school district departments are open to inspection in the absence of statutory exemption); AGO 85-79 (interoffice memoranda, correspondence, inspection reports of restaurants, grocery stores and other such public premises, nuisance complaint records, and notices of violation of public health laws maintained by county public health units are subject to disclosure in the absence of any statutory exemption); and AGO 71-243 (inspection reports made or received by a school board in connection with its official investigation of the collapse of a school roof constitute public records). Cf. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to boards acting in a "quasi-judicial" capacity).

Disclosure of records of investigative proceedings upon completion of a preliminary investigation is not violative of privacy rights arising under the state or federal Constitutions. See *Garner v. Florida Commission on Ethics*, 415 So. 2d 67 (Fla. 1st DCA 1982), review denied, 424 So. 2d 761 (Fla. 1983) (public's right to view commission files prepared in connection with investigation of alleged violations of the Code of Ethics outweighs an individual's disclosural privacy rights).

The investigative exemptions now found in paragraphs (2)(c) through (f), (h) and (i) of s. 119.071(2), F.S., limit disclosure of specified law enforcement records, and thus do not apply to investigations conducted by agencies outside the criminal justice system. See *Douglas v. Michel*, 410 So. 2d



936, 939 (Fla. 5th DCA 1982), questions answered and approved, 464 So. 2d 545 (Fla. 1985) (exemption for "information revealing surveillance techniques or procedures or personnel" [now found at s. 119.071(2)(d)] does not apply to a hospital's personnel files). See also AGO 91-75, stating that the active criminal investigation and intelligence exemption does not apply to information compiled in a school board investigation into the conduct of certain school departments; and AGO 87-51, concluding that complaints from state labor department employees relating to departmental integrity and efficiency do not constitute criminal intelligence information or criminal investigative information.

Thus, the contents of an investigative report compiled by the Inspector General for a state agency in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to the department. Inf. Op. to Slye, August 5, 1993.

b. Statutory Exemptions

A number of exemptions exist for investigative records. For a more complete listing, please refer to Appendix D and the Index.

(1) Discrimination Investigations

Complaints and other records in the custody of any agency which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance evaluation, or related activities are exempt from 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of a hearing or court proceeding. Section 119.071(2)(g)1., F.S. See AGO 96-93 (prior to completion of an investigation and a finding of probable cause, records of a county equal opportunity board are exempt from disclosure). Cf. s. 119.071(2)(k), F.S., providing for confidentiality of complaints and investigative records of employee

misconduct until the investigation is no longer active or has been concluded as set forth in the exemption.

Section 119.071(2)(g)1., F.S., was found to be inapplicable to a complaint filed against a county commissioner which listed many examples of alleged abusive behavior that would be inappropriate for one in the commissioner's position, because the complaint did not assert any form of discrimination based upon race, color, religion, sex, national origin, handicap or marital status. *Schweickert v. Citrus County Florida Board*, 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016). The appellate court also rejected the county's argument that it could delay producing the complaint until after the investigation was completed because the investigator might have discovered or generated records during her investigation that could have related to discrimination based on race, color, religion, sex, national origin, handicap or marital status which would have qualified for the exemption.

Section 119.071(2)(g)2., F.S., provides that when the alleged victim chooses not to file a complaint and requests that the records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential. But see AGO 09-10, stating that when an agency has reached a settlement with an individual who has filed a discrimination complaint, the claimant is considered to have pursued the claim and may not request confidentiality pursuant to the exemption.

Complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing, are exempt from s. 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of any hearing or court proceeding. Section 119.0713(1), F.S.

Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt if such



information identifies that person as an alleged victim or as a victim of sexual harassment. Confidentiality may be waived in writing by the alleged victim or the victim. The information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. Section 119.071(2)(n), F.S. CF. s. 284.45, F.S.

(2) Employee Misconduct Investigations

For information about the exemption for complaints and active investigations of employee misconduct contained in s. 119.071(2)(k), F.S., please refer to the discussion on page 135.

(3) Ethics Investigations

The complaint and records relating to the preliminary investigation conducted by the Commission on Ethics or other specified entities are confidential and exempt until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the records be made public, or until the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred. Section 112.324(2)(a) and (e), F.S. See also s. 112.3215(8)(b) and (d), F.S. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part III, Ch. 112, F.S., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate ethics complaints. AGO 96-05. And see *Gay v. City of Madeira Beach*, No. 16-004836 (Fla. 6th Cir. Ct. May 26, 2017), available online in the Cases database at the open government site at myfloridalegal.com (city must permit inspection and copying of complaints filed with the Ethics Commission and received by the City Attorney). Cf. s. 112.324(2)(b), F.S. (written referrals to the Ethics Commission submitted pursuant to s.

112.324[1][b], F.S., records relating to such referrals held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt except as provided in s. 112.324[2][e], F.S.)

(4) Local Government Inspector General Investigations

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2) (b), F.S. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id.* Cf. *Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998), noting that a draft audit report prepared by the clerk of court did not become "final" when it was reviewed by the county administrator; the report became "final" and subject to disclosure when presented to the county commission. Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. *Id.*

(5) State Inspector General Investigations

Audit workpapers and reports of state agency inspectors general appointed in accordance with s. 20.055, F.S., are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1), F.S. Section 20.055(6)(b), F.S. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), F.S. [whistleblower], the name or identity of the individual shall not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation. *Id.* And see page 135, discussing the exemption for complaints alleging employee misconduct found in s. 119.071(2)(k), F.S.

Section 112.31901(2), F.S., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, F.S., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from s. 119.07(1), F.S., until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Section 112.31901(1), F.S. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), F.S.

(6) State Licensing Investigations

Pursuant to s. 455.225(10), F.S., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential and exempt from disclosure until 10 days after probable cause has been found to exist by the probable cause panel of the licensing board or by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality, whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and licensing boards within that department as provided in s. 456.073(10), F.S. See *Salameh v. Florida Department of Health*, 325 So. 3d 349 (Fla. 1st DCA 2021) (pursuant to s. 456.073[10], records of administrative complaint made public after probable cause panel found probable cause but failed to consider Dr. Salameh's exculpatory materials as required by statute, could not be maintained as confidential even though panel subsequently reconsidered the case, reviewed Salameh's submission, found no probable cause and withdrew the complaint). Complaints filed by a municipality against a licensed professional are included within the



confidentiality provisions. AGO 02-57. However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city related to the nature of the alleged offense by the licensed professional. Id.

(7) Whistle-Blower Investigations

(a) Whistle-Blower Identity

The Whistle-blower's Act, ss. 112.3187-112.31895, F.S., "is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor." AGO 12-20. It provides, with limited exceptions, for the confidentiality of the identity of a whistle-blower who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. Section 112.3188(1), F.S. See also s. 20.055(6)(b), F.S.

A complainant may waive the right to confidential treatment of his or her name or identity. AGO 95-20. However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. AGO 96-40.

In order to qualify as a whistle-blower complaint, particular information must be disclosed to an "appropriate local official" or other statutorily designated officials; a general complaint of wrongdoing or a complaint to officials other than those specifically named in s. 112.3188(1), F.S.,

does not entitle the complainant to whistle-blower protection. AGO 98-37. And see AGO 99-07 (county inspector general qualifies as an "appropriate local official" for purposes of the whistle-blower law); and AGO 96-40 (town ethics commission may constitute "appropriate local official" for purposes of processing complaints under the whistle-blower law). Cf. AGO 12-20 (while county transportation board may be designated as an "appropriate local official" under s. 112.3188, F.S., such designation "may not be advisable" because board must comply with the Sunshine Law and, "[a]bsent a statutory exemption, the handling of confidential information or records during the course of public meetings does not otherwise allow meetings of the board to be closed").

(b) Active Investigations

Section 112.3188(2)(a), F.S., states that except as specifically authorized in s. 112.3189, F.S., all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt if the information is being received or derived from allegations as set forth in s. 112.3188(1)(a) or (b), F.S., and an investigation is "active" as defined s. 112.3188(2)(c), F.S. "Thus, the act protects the identity of employees and persons who disclose information that can serve as the basis for a whistle-blower complaint, as well as information received in the course of a whistle-blower investigation." AGO 10-48.

Information received by an appropriate local official or local chief executive officer or produced or derived from fact-finding or investigations by local government pursuant to s. 112.3187(8)(b), F.S. [authorizing administrative procedures for handling whistle-blower complaints filed by local public employees] is confidential and exempt, provided that the information is being

received or derived from allegations set forth in s. 112.3188(1) and an investigation is "active" as defined in the section. Section 112.3188(2)(b), F.S. A complaint initiating an investigation into alleged mismanagement and overpayment of contractors constitutes "information received by" a proper local official and is not subject to disclosure until the investigation is no longer active. *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019). See also s. 119.071(2)(k), F.S., providing that complaints alleging "employee misconduct" are confidential until the investigation is no longer active or has concluded as provided in the exemption.

The exemption applies whether the allegations of wrongdoing were received from an anonymous source or a named individual; in either case information received or generated during the course of the investigation is subject to the exemption. AGO 99-07. And see AGO 10-48 (confidential information received by the county's inspector general pursuant to the county's whistle-blower act may be shared with the county's ethics commission only for the purpose of carrying out the commission's whistle-blower functions).

(Florida Office of the Attorney General // © March 9, 2023)

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)(1)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)(1)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)(1)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)(1)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)(1)7., F.S.

A law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(1)5., F.S. The exemption applies retroactively. Section 119.071(2)(1)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.

1. 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.

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2-C-16 | LITIGATION RECORDS**a. Attorney-Client Communications**

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). See also *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, supra. And see *Seminole County, Florida v. Wood*, 512 So. 2d 1000, 1001 (Fla. 5th DCA 1987), review denied, 520 So. 2d 586 (Fla. 1988) (the rules of ethics provide that an attorney may divulge a communication when required by law; the Legislature has plenary authority over political subdivisions and can require disclosure of otherwise confidential materials); and AGO 98-59 (records in the files of the former city attorney, who served as a contract attorney for the city, which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor). Cf *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021), discussing the application of R. Regulating Fla. Bar 4-42 and Fla. Bar Ethics Opinion 09-1.

On the other hand, the Florida Supreme Court has ruled that files in the possession of the Capital Collateral Representative (CCR) in furtherance of its representation of an indigent client are not subject to public disclosure under Ch. 119, F.S. The Court noted that the files are not governmental records for purposes of the public records law but are the "private records" of the CCR client. *Kight v.*



Dugger, 574 So. 2d 1066 (Fla. 1990). And see *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999), available online in the Cases database at the open government site at myfloridalegal.com (private attorneys retained by individual county commissioners in a criminal case were not "acting on behalf " of a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the commissioners' legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

b. Attorney Work Product

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Ch. 119, F.S. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). See also *Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984), approved, 471 So. 2d 26 (Fla. 1985), noting that in the absence of legislation, a work product exemption is "non-existent;" and *Hillsborough County Aviation Authority v. Azzarelli Construction Company*, 436 So. 2d 153, 154 (Fla. 2d DCA 1983), stating that the Supreme Court's decision in *Wait* "constituted a tacit recognition that work product can be a public record."

With the enactment of s. 119.071(1)(d), F.S., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. See *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986), in which the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege...." See also *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and *City of Miami Beach v. DeLapp*, 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). Cf. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 682 (Fla. 1st DCA



2018), noting that "it was important" that an agency attorney's memorandum which was prepared exclusively to assess the strength of the agency's evidence in a licensing case remain exempt from disclosure during the pendency of the adversarial administrative proceedings.

Section 119.071(1)(d)1., F.S., states, in relevant part:

A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt [from disclosure] until the conclusion of the litigation or adversarial administrative proceedings.

Note that this statutory exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively on pages 127-128, certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Ch. 119, F.S. See *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

Under the terms of the statute, the work product exemption "is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney." Section 119.071(1)(d)2., F.S. See also AGO 94-77 (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation).

An agency asserting the work product exemption must identify the potential parties to the litigation or proceedings. Section 119.071(1)(d)2., F.S. However, the agency is not required to identify each document in a record that it asserts to be exempt under the work product exemption. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018). Whether to impose such a requirement "is a matter properly addressed to the legislature rather than this court." *Id.*

In the event of litigation disputing the claimed work product exemption, the court must conduct an in camera inspection of the records. *Environmental Turf, Inc. v. University of Florida Board of Trustees*, 83 So. 3d 1012 (Fla. 1st DCA 2012).

If a court finds that the record was improperly withheld, the party seeking the record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court. Section 119.071(1)(d)2., F.S. As one court has noted, the inclusion of an attorney's fee sanction "was prompted by the legislature's concern that government entities might claim the work product privilege whenever public access to their records is demanded." *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d 216, 218 (Fla. 2d DCA 1994).

(1) Scope of Exemption

(a) Attorney Bills and Payments

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, in AGO 85-89, the Attorney General's Office concluded that a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. Accord AGO 00-07 (records of outside attorney fee bills for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

If the bills and invoices contain some exempt work product--i.e., "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies],"--the exempt material may be deleted and the remainder disclosed. AGO 85-89. However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption. *Id.* And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com ("Obviously, an entry on a [billing] statement which identifies a specific legal strategy to be considered or puts a specific amount of settlement authority received from the client, would fall within the exemption. On the other hand, a notation that the file was opened, or that a letter was sent to opposing counsel, would not.").

Thus, an agency which "blocked out" most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, "improperly withheld" nonexempt material when it failed to limit its redactions to those items "genuinely reflecting its 'mental impression, conclusion, litigation strategy, or legal theory.'" *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d at 218. And see *Davis v. Sarasota County Public Hospital Board*, 480 So. 2d 203 (Fla. 2d DCA 1985), review denied, 488 So. 2d 829 (Fla. 1986), holding in part that a citizen seeking to examine records of a public hospital board concerning the payment of legal fees was entitled to examine actual records, not merely excerpts taken from information stored in the hospital's computer.

(b) Records Prepared Prior to Litigation or for Other Purposes

Unlike the open meetings exemption in s. 286.011(8), F.S., for certain attorney-client discussions between a governmental board and its attorney, s. 119.071(1)(d), F.S., is not limited to records created for pending litigation before a

court or administrative agency, but may also apply to records prepared "in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings...." (e.s.) See AGO 98-21, discussing the differences between the public records work product exemption in s. 119.071(1)(d) and the Sunshine Law exemption in s. 286.011(8), F.S.

However, s. 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product. AGO 91-75. The exemption is narrower than the work product privilege recognized by the courts for private litigants. AGO 85-89. In order to qualify for the work product exemption, the records must have been prepared exclusively for litigation or adversarial administrative proceedings, or prepared in anticipation of imminent litigation or adversarial administrative proceedings; records prepared for other purposes may not be converted into exempt material simply because they are also used in or related to the litigation. See, e.g., *Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007), cert. denied, 553 U.S. 1059 (2008) (memoranda prepared by corrections department attorney regarding lethal injection procedures do not constitute exempt attorney work product because memoranda do not relate to any pending litigation nor appear to have been prepared exclusively for litigation); *MHM Correctional Services, Inc. v. State, Department of Corrections*, No. 2009 CA 2105 (Fla. 2d Cir. Ct. June 10, 2009), available online in the Cases database at the open government site at myfloridalegal.com (department wrongfully withheld portions of an e-mail stream regarding the bid process as protected work product or privileged communications as none of the emails were prepared in contemplation of litigation as required by the statute).

Moreover, only those records which are prepared by or at the express direction of the agency attorney and reflect "a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency" are exempt from disclosure

until the conclusion of the proceedings. See *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city); *Jordan v. School Board of Broward County*, 531 So. 2d 976, 977 (Fla. 4th DCA 1988) (record did not constitute exempt work product because it "was not prepared at an attorney's express direction nor did it reflect a conclusion and mental impression of appellee"); and *Lightbourne v. McCollum*, *supra* (exemption inapplicable to records that conveyed specific factual information rather than mental impressions or litigation strategies). Cf. *Tober v. Sanchez*, 417 So. 2d 1053, 1055 (Fla. 3d DCA 1982), review denied sub nom., *Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (documents which are given by a client to an attorney in the course of seeking legal advice are privileged in the attorney's hands only if the documents were privileged in the client's hands; thus, otherwise public records made or received by agency personnel do not become privileged merely by transferring them to the agency attorney).

Thus, a circuit judge refused to apply the exemption to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp. See *Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995), available online in the Cases database at the open government site at myfloridalegal.com. Similarly, in AGO 05-23, the Attorney General's Office advised that notes taken by the assistant city attorney during interviews with co-workers of certain city employees in order to ascertain if employee discipline was warranted are not exempt from disclosure. See also AGO 91-75 (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the



school board to conduct an investigation of certain school district departments). Cf. *City of Avon Park v. State*, 117 So. 3d 470 (Fla. 2d DCA 2013) (recognizing that where no charges were filed against any of the parties mentioned in a state attorney investigator's report, the report was a public record and the s. 119.071[1][d], F.S., exemption was inapplicable).

(c) Settlement Records

If the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990). And see *Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the settled case and their litigation strategy would have a detrimental effect upon the agency's position in the related case). See also *Inf. Op. to Gastesi*, August, 27, 2015 (settlement demand furnished by plaintiff to agency); and *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (technical documents or data which were not prepared for the purpose of carrying litigation forward but rather were jointly authored among adversaries to promote settlement are not exempted as attorney work product). Cf. *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204, 205 (Fla. 2d DCA 1998), review denied, 727 So. 2d 909 (Fla. 1999) (private company under contract with sheriff to provide medical services for inmates at county jail must release records

relating to a settlement agreement with an inmate because all of its records that would normally be subject to the Public Records Act if in the possession of the public agency, are likewise covered by that law, even though in the possession of the private corporation).

(2) Duration of Exemption

The exemption from disclosure provided by s. 119.071(1)(d), F.S., is temporary and limited in duration. *City of North Miami v. Miami Herald Publishing Co.*, supra. The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims. See *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990); *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), review denied, 520 So. 2d 586 (Fla. 1988); and *Lightbourne v. McCollum*, supra (rejecting a "continuing exemption" claim by the state). And see AGO 13-13 (Sunshine Law exemption for certain attorney-client meetings found in s. 286.011[8], F.S., "does not recognize a continuation of the exemption for 'derivative claims' made in separate, subsequent litigation"). Cf. *State v. Coca-Cola Bottling Company of Miami, Inc.*, supra (although state cannot claim work product exemption for litigation records after conclusion of litigation, Ch. 119 does not cover oral testimony; thus, opposing counsel not entitled to take depositions of state representatives regarding the concluded litigation).

Thus, a school board failed to meet its burden of showing that items contained in a school board litigation report were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. *Barfield v. School Board of Manatee County*, 135 So. 3d 560 (Fla. 2d DCA 2014).

However, the phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County*, 960 So. 2d 785

(Fla. 5th DCA 2007). And see AGO 94-33, concluding that for purposes of the attorney-client exemption from the Sunshine Law in s. 286.011(8), F.S., a pending lawsuit is concluded when the suit is dismissed with prejudice or the applicable statute of limitations has run; "[t]o allow a plaintiff who has voluntarily dismissed a suit to gain access to transcripts of strategy or settlement meetings in order to obtain an advantage in the refiling of a lawsuit would subvert the purpose of the statute." Cf. *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 (Fla. 2d DCA 2014) (rejecting city's argument that because an agreement settling a quiet title action provided for further mediation should a dispute arise regarding the meaning of the agreement, the case was still pending for purposes of the Sunshine Law exemption in s. 286.011[8], F.S.).

In addition, the exemption extends "through prosecution of appeals." Inf. Op. to Boutsis, December 13, 2012. Cf. s. 119.071(1)(d)1., F.S. ("For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.").

c. Other Statutory Exemptions Relating to Litigation Records

Section 768.28(16)(b), F.S., provides an exemption for claims files maintained by agencies pursuant to a risk management program for tort liability until the termination of all litigation and settlement of all claims arising out of the same incident.

The "plain language of the statute" indicates that the "entire claims file is exempt from disclosure until resolution of the claim or claims." *City of Homestead v. McDonough*, 232 So. 3d 1069, 1071 (Fla. 3d DCA 2017). [emphasis supplied by the court]. Accordingly, the trial court erred by ordering production of certain records in the file on the theory that production would not harm the city. *Id.* See also *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007), stating that the phrase "settlement of all claims arising out of the same incident" included a legislative claims bill.

The exemption afforded by s. 768.28(16), F.S., is limited to tort claims for which the agency may be liable under s. 768.28, F.S., and does not apply to federal civil rights actions under 42 U.S.C. s. 1983. AGOs 00-20 and 00-07. And see *Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995), available online in the Cases database at the open government site at myfloridalegal.com (exemption now found at s. 768.28[16][b], F.S., for risk management files did not apply to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp). Moreover, the exemption does not include outside attorney invoices indicating hours worked and amount to be paid by the public agency, even though the records may be maintained by the agency's risk management office pursuant to a risk management program. AGO 00-07. And see AGO 92-82 (open meetings exemption provided by s. 768.28, F.S., applies only to meetings held after a tort claim is filed with the risk management program).

Section 624.311(2), F.S., provides that the "records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt [from disclosure] until termination of all litigation and settlement of all claims arising out of the same incident." A county's self-insured workers compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com. And see AGO 85-102 (s. 624.311, F.S., exemption includes correspondence regarding insurance claims negotiations between a county's retained counsel and its insurance carriers until termination of litigation and settlement of claims arising out of the same incident). Compare s. 284.40(2), F.S. (claim files maintained by the risk management division of the Department of Financial Services are confidential, shall be only for the use of the department, and are exempt from disclosure); and s. 1004.24(4), F.S. (claims files of self-insurance program adopted by Board of Governors, or the board's designee, are confidential and exempt).

d. Attorney Notes

Relying on its conclusion in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Court approved the decision of the Fifth District in *Orange County v. Florida Land Co.*, 450 So. 2d 341, 344 (Fla. 5th DCA 1984), review denied, 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term "public records" because they were not used to perpetuate, formalize, or communicate knowledge:

Document No. 2 is a list in rough outline form of items of evidence which may be needed for trial. Document No. 9 is a list of questions the county attorney planned to ask a witness. Document No. 10 is a proposed trial outline. Document No. 11 contains handwritten notes regarding the county's sewage system and a meeting with Florida Land's attorneys. Document No. 15 contains notes (in rough form) regarding the deposition of an anticipated witness. These documents are merely notes from the attorneys to themselves designed for their own personal use in remembering certain things. They seem to be simply preliminary guides intended to aid the attorneys when they later formalized the knowledge. We cannot imagine that the Legislature, in enacting the Public Records Act, intended to include within the term 'public records' this type of material. [Emphasis supplied by Court]

Similarly, in *Johnson v. Butterworth*, 713 So. 2d 985, 987 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. See also *Braddy v. State*, 219 So. 3d 803, 821 (Fla. 2017) ("handwritten attorney notes, draft documents, and annotated copies of decisional law... do not constitute public records"); *Ragsdale v. State*, 720 So. 2d 203, 205 (Fla. 1998) ("attorney's notes and other such preliminary documents are not public records and are never subject to public records disclosure"); *Valle v. State*, 705 So. 2d 1331, 1335 (Fla. 1997) (prosecutors' notes to themselves for their own personal use, including outlines of opening and closing arguments and notes of witness depositions are not public

records); *Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (handwritten notes dealing with trial strategy and cross-examination of witnesses are not public records); and *Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law are not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. See *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that "[i]nter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."

Thus, in *Coleman v. Austin*, 521 So. 2d 247, 248 (Fla. 1st DCA 1988), the court observed that "although notes from attorneys to themselves might not be public records when intended for their own personal use, inter-office and intra-office memoranda may constitute public records even though encompassing trial preparation materials." And see *Orange County v. Florida Land Company*, *supra*, in which the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency's formal work product, were public records although such circulated trial preparation materials might be exempt from disclosure pursuant to s. 119.071(1)(d), F.S., while the litigation is ongoing. See also AGO 05-23 (handwritten notes prepared by city's assistant labor attorney during her interviews with city employees are public records "when those notes are made to perpetuate and formalize knowledge and to communicate that information to the city's labor attorney").

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2-C-17 | PERSONAL RECORDS NOT MADE OR RECEIVED IN THE COURSE OF OFFICIAL BUSINESS

As noted in AGO 04-33, the broad definition of "public record" makes it clear that the "form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." See s. 119.011(12), F.S., defining the term "public records" to mean materials "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that in order to constitute "public records" for purposes of Ch. 119 disclosure requirements, the records must have been prepared "in connection with official agency business" and be intended to "perpetuate, communicate, or formalize knowledge of some type."

Accordingly, records which are not made or received in connection with the transaction of official business do not constitute public records for purposes of Ch. 119 disclosure requirements. See e.g. *Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business). Similarly, text messages from a city commissioner to her husband during a city commission meeting which were 'uniformly personal and private' and were not made in connection with any business transacted by the city, "did not possess the attributes of official business and, therefore, did not become subject to public records inspection." *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022). The court noted that the commissioner was not acting in her official capacity when she texted with her husband; "[n]or did her husband step out of his role as husband and adopt the role of a citizen either seeking to enter a City process or to transact City business." *Id.*

In evaluating whether a record is made or received in connection with the official business of an agency, "the determining factor is the nature of the record, not its physical location." *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). In *Clearwater*, the Court held that personal e-mails between government employees on government-owned computers which were not made or received in the course of official business did not constitute public records.



See also *Bent v. State*, 46 So. 3d 1047, 1050 (Fla. 4th DCA 2010) (recordings made by sheriff's office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); and *Media General Operations, Inc. v. Feeney*, 849 So. 2d 3 (Fla. 1st DCA 2003) (records of personal or private calls of legislative employees using cellular phone service provided by a political party do not constitute official business of the Legislature and are not subject to public disclosure).

However, in concluding that the location of e-mails on a government computer does not control the application of Public Records Act, the Clearwater court also cautioned that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *State v. City of Clearwater*, at 151n.2. And see *Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (personal flight log of pilots paid by county which are required as part of pilots' administrative duties are distinguishable from personal e-mails in *City of Clearwater* case and are subject to disclosure). See also AGO 09-19 (because the creation of a city Facebook page must be for a municipal, not private purpose, the "placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes"),

Thus, in *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com, the court concluded that billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; "and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." See also AGO 77-141 (copies of letters or other documents received by the mayor in his official capacity constitute records received "in connection with the transaction of official business" and therefore are public records). Compare Inf. Op. to Burke, April 14, 2010 (while the licensing board, and not Attorney General's Office, must determine whether a letter, allegedly sent to the

board by mistake, had been received by the board in connection with the transaction of official business, the board "may wish to consider whether circumstances characterize how the document was received, such as does the letter relate to a past, existing, or potential investigation by the board").

Similarly, the mere fact that an e-mail is sent from a private e-mail account using a personal computer is not the determining factor as to whether it is a public record; it is whether the e-mail was prepared or received in connection with official agency business. See *Butler v. City of Hallandale Beach*, supra. For example, if a public employee sends a proposed agency budget to his or her supervisor for review, the report is a public record, regardless of whether the report was sent from the employee's agency e-mail account using a government computer, or from his or her home computer using a personal e-mail account. And see AGO 08-07 (individual council members who post comments and emails relating to transaction of city business on a privately-owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

"An elected official's use of a private cell phone to conduct public business via text messaging can create an electronic written public record subject to disclosure." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018). However, in order for the communication to constitute a public record, "an official or employee must have prepared, owned, used, or retained it within the scope of his or her employment or agency." *Id.* at 1040-1041. According to the *O'Boyle* court, an official or employee's communication "falls 'within the scope of employment or agency' only when their job requires it, the employer or principal directs it, or it furthers the employer's or principal's interests." *Id.* at 1041. Cf. AGO 16-16 (hospital district not authorized to reimburse a board member for attorney fees incurred in responding to a public records request for records relating to her board service which were stored in her private computer and telephone when no suit, claim, charge, or action was instituted against the commissioner when the fees were incurred).

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2-C-18 | PERSONNEL RECORDS

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under s. 119.07(1), F.S. See *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).

a. Annuity or Custodial Account Activities

Records identifying individual participants in any annuity contract or custodial account under s. 112.21, F.S. (relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies) and their personal account activities are confidential and exempt from s. 119.07(1), F.S. Section 112.21(1), F.S.

b. Applications for Employment, References, and Resumes

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers. See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and AGOs 15-10 and 77-48. Similarly, communications from third parties are subject to disclosure. See *Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982), questions answered and approved, 464 So. 2d 545 (Fla. 1985). A written employment contract is a public record. AGO 13-14.

Section 1004.098(1)(a), F.S., establishes confidentiality for personal identifying information of applicants for president of a state university or Florida College System institution. The age, race, and gender of applicants who met the minimum qualifications for the position who were considered and the personal identifying information of applicants included in the final group of applicants are no longer confidential beginning at the earlier of the date the final group of applicants is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant. Section 1004.098(1)(b), F.S.



c. Collective Bargaining

(1) Relationship of collective bargaining agreement to personnel records

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. AGO 77-48. Thus, employee grievance records are disclosable even though classified as confidential in a collective bargaining contract because "to allow the elimination of public records from the mandate of Chapter 119 by private contract would sound the death knell of the Act." *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). Cf. *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

Similarly, a city may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. AGO 94-75. Accord AGO 94-54.

(2) Collective bargaining work product exemption

Section 447.605(3), F.S., provides:

All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S.

The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, F.S. See *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st DCA 1980), noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the s. 447.605(3) exemption; and *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976),



ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer.

Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions which reflect the impressions, strategies and opinions of the district representative are exempt pursuant to s. 447.605(3), F.S. Inf. Op. to Fulwider, June 14, 1993.

d. Complaints Against Employees

Section 119.071(2)(k), F.S., provides that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint is confidential and exempt until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

Prior to the enactment of this statute in 2013, there was no general exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees. See e.g., AGO 04-22 (anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). Instead, the Legislature enacted exemptions pertaining to specific types of complaints and investigations. See e.g. s. 943.03(2), F.S., providing for confidentiality of Florida Department of Law Enforcement records relating to an active investigation of misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

For information on the exemptions for whistleblower, discrimination and ethics complaints directed against public



officials and employees, please refer to the discussion on pages 98-101. A discussion of exemptions addressing complaints against law enforcement officers and educators follows:

(1) Law enforcement officers and correctional officers

(a) Scope of exemption and duration of confidentiality

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. See *Tribune Company v. Cannella*, 438 So. 2d 516, 524 (Fla. 2d DCA 1983), quashed on other grounds, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency").

However, section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency's investigation of the complaint, are confidential until the investigation is no longer active or until the agency head or his or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges.

The term "law enforcement officer" is defined as any person, other than a chief of police, who is employed full time or part time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and

includes any person who is appointed by the sheriff as a deputy sheriff under s. 30.07, F.S. Section 112.531(2), F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991). Cf. *Fraternal Order of Police v. Rutherford*, 51 So. 3d 485, 488 (Fla. 1st DCA 2010) (written complaint not necessary to trigger confidentiality afforded by s. 112.532[4] [b], F.S., as that statute provides a broader confidentiality for ongoing investigations whenever a law enforcement or correctional officer faces possible dismissal, demotion, or suspension without pay until the investigating agency "completes or abandons its investigation").

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the law enforcement agency's investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. And see AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation). But see *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) (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 identifying information in incident reports). For more

information about Marsy's Law, please see the discussion on page 121.

If the officer resigns prior to the agency's completion of its investigation, the exemption from disclosure provided by s. 112.533(2), F.S., no longer applies, even if the agency is still actively investigating the complaint. AGO 91-73. However, if the complaint has generated information which qualifies as active criminal investigative information, i.e., information compiled by a criminal justice agency while conducting an ongoing criminal investigation of a specific act, such information would be exempt while the investigation is continuing with a good faith anticipation of securing an arrest or prosecution in the foreseeable future. *Id.* See s. 112.533(2)(b), F.S., providing that the disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that the exemption ended once the sheriff's office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-

disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

A complaint is presumed to be inactive, and hence subject to disclosure, if no finding is made within 45 days after the complaint is filed. Section 112.533(2)(b), F.S. See *City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness--especially, as here, where there is other record evidence which sustains it").

(b) Limitations on disclosure

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). And see AGO 91-73. Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in s. 112.533(2), F.S. Cf. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure

since the information is exempt pursuant to s. 119.071(2)(h), F.S. Palm Beach County Police Benevolent Association v. Neumann, supra.

However, the state attorney's records of a closed criminal investigation are not made confidential by s. 112.533, F.S., even though an internal investigation conducted by the police department remains pending concerning the same complaint. AGO 00-66. Cf. AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

(c) Unauthorized disclosure penalties

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. Id.

The Attorney General's Office has issued several advisory opinions interpreting this statute. See, e.g., AGO 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation). Cf. AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing agency has made its initial findings). But see Cooper v. Dillon, 403 F.



3d 1208, 1218-1219 (11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional "[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government."

(2) Public School System Employees

The complaint and material relating to the investigation of a complaint against a public school system employee are confidential until the preliminary investigation is either concluded or ceases to be active. Section 1012.31(3)(a)1., F.S. See AGO 91-75 (while exemption applies when a complaint against a district employee has been filed and an investigation against that employee ensues, it does not provide a basis for withholding documents compiled in a general investigation of school departments). Cf. *Johnson v. Deluz*, 875 So. 2d 1,3 (Fla. 4th DCA 2004) (because "legislature had no intention of permitting confidential student information to be made public," student-identifying information must be redacted from public report of investigation of school principal); and *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about a college instructor's classroom behavior qualifies as an exempt "education record").

While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in a school district employee's personnel file, the statute does not prevent a school board from investigating the allegations contained in an anonymous letter nor does it permit the school board to destroy the anonymous material absent compliance with statutory restrictions on destruction of public records. AGO 87-48. Moreover, the personnel file is open at all times to school board members, the superintendent, or the principal, or their respective designees in the exercise of their duties, and to law enforcement personnel in the conduct of a lawful



criminal investigation. Section 1012.31(3)(b) and (c), F.S.

(3) State university and Florida College System institution employees

For information on statutory exemptions for complaints filed against state university or Florida College System institution (formerly community college) employees, please refer to the discussion of employee evaluations on pages 141.

e. Conditions for Inspection of Personnel Records

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Ch. 119, F.S.). And see *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002) ("only the custodian of such records can assert any applicable exemption; not the employee").

Thus, while an agency is not precluded from notifying an employee that a request has been made to inspect his or her personnel records, in the absence of express legislative authority, the production of personnel records may not be delayed in order to allow the employee to be notified or present during the inspection of the public records relating to that employee. Compare s. 1012.31(3)(a)3., F.S., providing that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified by certified mail or personal delivery as provided in s. 1012.31(2)(c), F.S.

(1) Privacy Issues

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. See *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist.

"Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002). See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981). But see *Fadjo v. Coon*, 633 F.2d 1172, 1175n.3 (5th Cir. 1981), noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy."

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. See e.g., *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure).

Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989). See also *Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA 1990), review denied, 576 So. 2d 287 (Fla. 1990) (public employer has an affirmative duty to inform a discharged employee of his right to seek a post-termination name-clearing hearing). Cf. *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001) (failure to provide name-clearing hearing to employee who alleged that he was denied a promotion due to stigmatizing information in his personnel file does not violate the employee's due process rights, because "in this circuit a 'discharge or more' is required").



(2) Sealed Records

An agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. Nor may an agency, absent a statutory exemption for such records, agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file for the purpose of removing such records from public access. AGO 94-54. Accord AGO 11-19 (superintendent's failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). And see AGO 15-10 (agency may not "seal" job applications or request that they be submitted as "sealed" records to foreclose public access).

f. Criminal History Information

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990.

In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from s. 119.07(1), F.S., or use of the information is restricted. See, e.g., s. 110.1127(2)(d) and (e), F.S. (agency positions designated or specified as provided in s. 110.1127, F.S.); s. 1002.36(7) (d) and (e), F.S. (School for the Deaf and the Blind); and s. 39.821(1) F.S. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history 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 under Florida's Public Records Act. AGO 99-01. However, information developed by the school district from further inquiry into references in the federal criminal



history record information is a public record which should be included in a school district employee's personnel file. Id.

Sections 943.0585 and 943.059, F.S., prohibit a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. AGO 94-49.

g. Deferred Compensation

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt. Section 112.215(7), F.S.

h. Direct Deposit

Direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1), F.S. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), F.S.

i. Drug Test Results

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with s. 112.0455, F.S., the Drug-Free Workplace Act, are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), F.S. See also s. 112.0455(8)(l) and (t), F.S.

While the provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, ss. 440.101-440.102, F.S., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. See AGO 98-38. Section 440.102(8), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program implemented pursuant to Ch. 440, F.S. AGO 13-19. Cf. AGO 94-51 (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, F.S.); and Inf. Op. to McCormack, May 13, 1997 (s.



440.102[8], F.S., applies to public employees and not to drug test results of public assistance applicants). And see s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the reemployment assistance law.

In AGO 96-58, the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to s. 401.265(2), F.S., requiring a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to ss. 440.101-440.102, F.S.

j. Employee Assistance Program

An employee's personal identifying information contained in records held by the employing agency relating to that employee's participation in an employee assistance program is confidential and exempt from disclosure. See ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

k. Employment Search or Consultant Records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency, records made or received by the private company in connection with the search are public records. AGO 92-80. See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980) (firm of consultants hired to conduct an employment search for position of managing director of a public agency was "acting on behalf of " a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of search were public records). Cf. s. 1004.098(1), F.S., discussed on page 134 establishing an exemption for personal identifying information of applicants for president of a state university or Florida College institution.



1. Evaluations of Employee Performance

Evaluations of public employee performance are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977):

No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

However, there are statutory restrictions on access to evaluations of employee performance for public school system employees. Section 1012.31(3)(a), F.S. Similarly, there are exemptions for evaluations contained in limited-access records prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; prescribed by the State Board of Education for Florida College System institution employees, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S.

A discussion of each of these exemptions follows:

(1) Hospital Employees

Section 395.3025(9), F.S., authorizes hospitals to prescribe the content of limited-access employee records which are not available for disclosure for 5 years after such designation. Such records are limited to evaluations of employee performance, including records forming the basis for evaluation and subsequent actions. See *Times Publishing Company v. Tampa General Hospital*, No. 93-03362 (Fla. 13th Cir. Ct. May 27, 1993), available online in the Cases database at the open government site at myfloridalegal.com (s. 395.3025[9] exemption does not apply to list of terminated hospital employees; hospital ordered to allow newspaper to inspect list and personnel files of those persons named in list after "limited-access" documents have been removed).

(2) Public School Employees

Employee evaluations of public school system employees prepared pursuant to cited statutes are confidential



until the end of the school year immediately following the school year during which the evaluation was made; however, no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S. However, the exemption applies only to the "employee evaluation." See *Morris Publishing Group, LLC v. Department of Education*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013), review denied, 157 So. 3d 1046 (Fla. 2014) ("While section 1012.31[3] [a]2 provides that the evaluation of a public school teacher is not subject to disclosure under the public records law, it does not follow that any information or data used to prepare the evaluation is likewise exempt from disclosure").

Moreover, information obtained from evaluation forms circulated by the local teacher's union to its members that is provided unsolicited to the superintendent is not exempt under this statute. AGO 94-94. In addition, written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23. Cf. AGO 11-19, concluding that a superintendent's failure to comply with a statute requiring that a performance evaluation be discussed with an employee before it is filed in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed.

(3) State University and Florida College System Institution Employees

Limited-access records maintained by a state university on its employees are confidential and exempt from s. 119.07(1), F.S., and may be released only upon authorization in writing from the employee or upon court order. Without such authorization, access to the records is limited to university personnel as specified in the statute. Section 1012.91, F.S.

"Limited-access records" are limited to: information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee; records relating to an investigation of employee misconduct which records are confidential until



the conclusion of the investigation or the investigation ceases to be active as defined in the exemption; and records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made. Section 1012.91(1), F.S.

For sexual harassment investigations of university personnel, portions of records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Section 1012.91(2), F.S. Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records. Section 1012.91(4), F.S.

Regarding Florida College System institution employees, s. 1012.81, F.S., states that rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such records are limited to information reflecting academic evaluations of employee performance and certain disciplinary and grievance records as described in the exemption. Limited access records are confidential and exempt and may not be released except as authorized in the exemption. Cf. *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about an instructor's classroom behavior qualifies as an exempt "education record").

m. Examination Questions and Answer Sheets

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), F.S. See *Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [which] 'tested' the

applicants' response both as to style and content"). And see *Rush v. High Springs*, 82 So. 3d 1108 (Fla. 1st DCA 2012) (exemption applies to questions and answers contained in preemployment polygraph examinations).

The exemption from disclosure in s. 119.071(1)(a), F.S., applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners. See *Dickerson v. Hayes*, supra at 837. Compare s. 455.229(1), F.S., providing confidentiality for "examination questions, answers, papers, grades, and grading keys" used in licensing examinations administered by the Department of Business and Professional Regulation.

A person who has taken an examination has the right to review his or her own completed examination. Section 119.071(1)(a), F.S. See AGO 76-210, stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed. However, the examinee possesses only the right to review his or her own completed examination and may not make or obtain copies of that examination. AGO 81-12.

n. Home Addresses, Telephone Numbers and Other Personal Information

In the absence of statutory exemption, home addresses, telephone numbers, photographs, and dates of birth of public officers and employees are not exempt from disclosure. See AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files). And see *United Teachers of Dade v. School Board of Dade County*, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992), available online in the Cases database at the open government site at myfloridalegal.com (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information). Cf. AGO 85-03 (list containing names and

addresses of subscribers to state magazine is a public record).

(1) Listing of Public Officers and Employees Covered by Exemptions

The home addresses, telephone numbers, and other specified personal information pertaining to certain public officers and employees and their spouses and children have been exempted in ss. 119.071(4)(d) and 119.071(5)(i) F.S. The term "home address" for purposes of s. 119.071(4)(d), F.S., means "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address." Section 119.071(4)(d)1.a., F.S.

For purposes of s. 119.071(4)(d), F.S., the term "telephone numbers" includes "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." Section 119.071(4)(d)1.b., F.S.

(a) Abuse investigators for Department of Children and Families and Department of Health

a. Scope of exemption: Active or former personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft or other criminal activities; and active or former personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of

the spouses and children of such personnel;
and the names and locations of schools and day
care facilities attended by the children of
such personnel

d. Statutory reference: Section
119.071(4) (d)2.a., F.S.

(b) Child advocacy personnel and child protection
team members

a. Scope of exemption: Current or former
directors, managers, supervisors, and
clinical employees of a child advocacy center
that meets the standards of s. 39.3035(2) and
fulfills the screening requirements of s.
39.3035(3) and the members of a Child
Protection Team as described in s. 39.303
whose duties include supporting the
investigation of child abuse or sexual abuse,
child abandonment, child neglect, and child
exploitation or to provide services as part of
a multidisciplinary case review team.

b. Information exempted: Home addresses,
telephone numbers, dates of birth, and
photographs

c. Family information exempted: Names, home
addresses, telephone numbers, photographs,
dates of birth and places of employment of the
spouses and children of such personnel; and
the names and locations of schools and day
care facilities attended by the children of
such personnel

d. Statutory reference: Section
119.071(4) (d)2.t., F.S.

(c) Code enforcement officers

a. Scope of exemption: Current or former code
enforcement officers

b. Information exempted: Home addresses,
telephone numbers, dates of birth, and
photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.i., F.S.

(d) County addiction facility personnel

a. Scope of exemption: Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility. The term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401, and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26)

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.s., F.S.

(e) County tax collectors

a. Scope of exemption: County tax collectors

b. Information exempted: Home addresses, telephone numbers, and dates of birth

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and

locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.n., F.S.

(f) Domestic violence advocates

a. Scope of exemption: Current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39

b. Information exempted: Home addresses, telephone numbers, places of employment, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.u., F.S.

(g) Domestic violence and other specified crime victims

Please refer to the discussion on page 78.

(h) Emergency medical technicians or paramedics

a. Scope of exemption: Current or former emergency medical technicians or paramedics certified under Ch. 401, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and

locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.q., F.S.

(i) Firefighters

a. Scope of exemption: Current or former firefighters certified in compliance with s. 633.408, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of spouses and children of such firefighters; and the names and locations of the schools and day care facilities attended by the children of the firefighters

d. Statutory reference: Section 119.071(4) (d)2.d., F.S.

(j) Guardians ad litem

a. Scope of exemption: Current or former guardians ad litem, as defined in s. 39.820, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons

d. Statutory reference: Section 119.071(4) (d)2.j., F.S.

(k) Hospital employees

Please refer to the discussion on pages 96-97.

(l) Human resource managers (local governments)

a. Scope of exemption: Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.h., F.S.

(m) Impaired practitioner consultants

a. Scope of exemption: Current or former impaired practitioner consultants retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of

schools and day care facilities attended by the children of such consultants or employees

d. Statutory reference: Section 119.071(4) (d)2.p., F.S.

(n) Inspectors general and internal auditors performing specified duties

a. Scope of exemption: Current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.r., F.S.

(o) Investigators and inspectors of the Department of Business and Professional Regulation

a. Scope of exemption: Current or former investigators or inspectors of the Department of Business and Professional Regulation

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel



d. Statutory reference: Section 119.071(4) (d)2.m., F.S.

(p) Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties

a. Scope of exemption: Current or former nonsworn investigative personnel of the Department of Financial Services and Office of Financial Regulation whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel.

d. Statutory reference: Section 119.071(4) (d)2.b., and c., F.S.

(q) Judges, magistrates, and hearing officers (state)

I. Administrative law judges, magistrates, and child support hearing officers

a. Scope of exemption: General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.g., F.S.

II. Court justices and judges

a. Scope of exemption: Current or former Justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of such justices and judges

d. Statutory reference: Section 119.071(4)(d)2.e., F.S.

(r) Juvenile Justice juvenile probation and detention officers and counselors

a. Scope of exemption: Current or former juvenile probation officers and supervisors, detention superintendents and assistant superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors, supervisors, and administrators, human services counselor administrators, rehabilitation therapists and social services counselors of the Department of Juvenile Justice

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.k., F.S.

(s) Law enforcement and correctional personnel

a. Scope of exemption: Active or former sworn law enforcement personnel or active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.a., F.S.

(t) Personnel of the Department of Health with specified duties

a. Scope of exemption: Current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or

health care facilities licensed by the Department of Health

b. Information exempted: Homes addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.o., F.S. See also s. 119.071(4)(d)2.a., F.S. (child abuse or neglect investigators).

(u) Prosecutors and judges (federal)

a. Scope of exemption: Current or former United States attorneys, assistant United States attorneys, judges of the United States Courts of Appeal, United States district judges or United States magistrates if the individual submits to the agency having custody of such information a written request to exempt such information from public disclosure as well as a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public

b. Information exempted: Home address, telephone number and photograph

c. Family information exempted: Home address, telephone number, photograph, and place of employment of the spouse or child; and the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate

d. Statutory reference: Section 119.071(5)(i), F.S.

(v) Prosecutors (state)



a. Scope of exemption: Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.f., F.S.

(w) Public defenders and other specified counsel

a. Scope of exemption: Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.l., F.S.

(x) Public guardians

a. Scope of exemption: Current or former public guardians and employees with fiduciary responsibility, as that term is defined in the exemption, who submit to the custodial agency



a written request for maintenance of the exemption. The term "employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 744.21031, F.S.

(y) Revenue collection and enforcement or child support enforcement

a. Scope of exemption: Active or former personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.



(2) Authority to Release Protected Information

The purpose of the s. 119.071(4)(d), F.S., exemption is to protect the safety of the enumerated individuals and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 10-37. And see AGOs 90-50 and 96-57. The statute makes these records exempt from mandatory disclosure requirements, not confidential; thus, an agency is not prohibited from disclosing the information in all circumstances. AGO 10-37.

However, in determining whether to disclose the information, the agency should consider the underlying purpose of the statute, i.e., safety of the listed individuals and their families. AGO 90-50. See also AGO 08-24. Cf. AGO 90-50, noting that the exemption does not prohibit an agency from "access to, and maintaining information on, its employees, including their names and addresses."

In other words, a police department, in deciding whether to publicly release photographs of law enforcement personnel, should determine whether there is a statutory or substantial policy need for disclosure. AGO 07-21. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)2. *Id.* For example, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. AGO 90-50.

Similarly, in AGO 08-24, the Attorney General's Office noted that the home addresses and other protected personal information of the spouses of law enforcement officers who are employed by the school board are exempt from disclosure under s. 119.071(4)(d)2., F.S., and therefore, the school board was not required to report such information to the certified bargaining representative. And see *Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs

of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

By contrast, information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S. Inf. Op. to Reese, April 25, 1989. Similarly, a police and firefighter pension board may release exempt employee information pursuant to a confidentiality agreement for use by a vendor that has contracted with the board to conduct cybersecurity testing of the board's electronic data storage systems. AGO 19-08.

A 2017 Attorney General Opinion advised that a property appraiser may disclose the address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S. AGO 17-05. The code inspector's statutory duty to notify an alleged code violator of a violation warrants use of an otherwise exempt address for the limited purpose of providing such notice and does not authorize further disclosure of the address. Id. Cf., s. 119.071(4)(d)7., F.S.(2021), brought into the statutes by s. 3, Ch. 21-215, Laws of Florida, providing that exempt information "may be disclosed pursuant to s. 28.2221[relating to exempt information in the Official Records] to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar."

The s. 119.071(4)(d)2., F.S., exemption applies to public agencies, not private entities unless the private entity is acting on behalf of a public agency. Inf. Op. to Gomez, Nov. 3, 2008. Cf. s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or

with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. But see *Brayshaw v. City of Tallahassee, Fla.*, 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

(3) Records held by agencies that are not the employer of the designated officers or employees

An agency that is the custodian of personal information specified in s. 119.071(4)(d)2., F.S., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)3., F.S. See AGOs 97-67 (Official Records maintained by clerk of court), 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and 04-20 (property appraiser). And see AGO 05-38 (request made to the property appraiser for an exemption from disclosure of personal information would follow the property appraiser's records when they are relayed to the clerk of courts carrying out duties for the Value Adjustment Board).

The request must be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status. Section 119.071(4)(d)3., F.S.

The provisions of s. 119.071(4)(d), F.S., should not be read "to impose a burden on employers to know the past law enforcement employment status of employees who may work for them in other capacities." AGO 10-37. Thus, a former law enforcement officer from one municipality who is currently employed by another municipality in a non-law enforcement capacity must make a written request pursuant to s. 119.071(4)(d)3., F.S., that his or her personal information be maintained as exempt by the current employer. *Id.*



A request made pursuant to s. 119.071(4)(d)3., F.S., for maintenance of exempt information in court records or the official records must specify the document type, identification number, and page number of the court record or official record that contains the exempt information. Section 119.0714(2)(f) and (3)(f), F.S.

A covered officer or employee or other specified person may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information. Section 119.071(4)(d)5., F.S. And see s. 119.071(4)(d)4., F.S., specifying duties of property appraisers and county tax collectors with respect to a request for maintenance of exempt status; s. 119.071(4)(d)8., F.S., providing that the exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location; and s. 119.071(4)(d)9., F.S., providing procedures for a request for release of protected decedent's removed information.

(4) Application of exemption to:

(a) Telephone Numbers of Cellular Telephones Issued by Agencies

Cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure. Inf. Op. to Laquidara, July 17, 2003. In 2012, the Legislature amended s. 119.071(4)(d), F.S., to define the term "telephone numbers" as used in the exemption to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." See s. 119.071(4)(d)1.b., F.S. As originally introduced, the 2012 legislation would have also included "telephone numbers associated with agency cellular telephones" within

the definition of "telephone numbers." See HB 629, filed November 10, 2011. However, this proposed language was removed from the original bill during the legislative process.

(b) List of names of designated officers and employees

While s. 119.071(4)(d)2., F.S., exempts home addresses and other personal information of the designated public officers and employees, it does not exempt the names of these officers and employees from public disclosure (although typically the names of the spouses and children are exempt). See, e.g., s. 119.071(4)(d)2.g., F.S. (names of spouses and children of code enforcement officers are exempt).

Accordingly, the Attorney General's Office advised that if the property appraiser maintains a list of the names of officers and employees who have requested the exemption of their home addresses as authorized by s. 119.071(4)(d)3., F.S., this list is not exempt. AGO 08-29. Cf. s. 119.071(4)(d)4.a., F.S. (2021), relating to removal of the name of the individual who has requested exempt status and the instrument number or Official Records information identifying the property from publicly available records maintained by the tax collector or property appraiser.

However, as noted elsewhere in this manual, an agency is not required to create or reformat records in order to comply with a request under Ch. 119; the duty of the public records custodian is to provide access to existing records. See the discussion in pages 167-169.

(c) Prior home addresses

Section 119.071(4)(d)2., F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. AGO 10-37.

(d) Maps showing physical location of homes

A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written exemption request from the officer. AGO 04-20. See also the definition of the term "home address" as defined in s. 119.071(4)(d)1.a., F.S.

(e) Home addresses of persons who are not the owner of the property

The exemption applies to the home addresses, telephone numbers, and other personal information relating to the specified individuals "without regard to whether or not they own the real property at which they reside." AGO 14-07.

(f) Booking photographs

Section 119.071(4)(d), F.S., exempts the photograph of a current or former law enforcement officer, whether held by the employing agency or by a non-employing agency which has received a written request to maintain the exempt status of the record. Inf. Op. to Amunds, June 8, 2012. Thus, the agency should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. Id. In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption, i.e., the safety of law enforcement officers and their families. Id. See also AGOs 90-50 and 07-21. Cf. AGO 94-90 (statute did not preclude release of

booking photograph of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071(4)(c), F.S.).

o. Medical Information and Health Insurance Participant Information

(1) Medical Information and Medical Claims Records

Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1), F.S. Section 119.071(4)(b)1., F.S. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order. Id. See AGO 98-17 (exemption "appears to extend to governmental employees the protection for personal medical records that is generally enjoyed by private sector employees"). Cf. *Delaurentos v. Peguero*, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (s. 119.071[4][b]1., "simply provides an exemption in the event that a citizen makes a public records request for medical records;" but does not "create a privilege which would insulate such records from discovery in litigation").

Public school system employee medical records, including psychiatric and psychological records, are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from s. 119.07(1), F.S. Section 760.50(5), F.S.

Patient medical records and medical claims records of current or former employees and eligible dependents enrolled in group insurance plans of specified governmental entities are confidential and exempt from s. 119.07(1), F.S.; such records shall not be furnished to any person other than the employee or the employee's legal representative, except as authorized in the

subsection. Sections 110.123(10) (state employees), 112.08(7) (county or municipal employees), and 112.08(8) (water management district employees), F.S. See AGO 91-88, citing to *News-Press Company, Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987), stating that the exemption applies broadly and is not limited solely to medical records filed in conjunction with an employee's participation in a group insurance plan; rather, the exemption applies to all medical records relating to employees enrolled in a group insurance plan. And see AGOs 01-33 (confidentiality of patient records at medical clinic owned and operated by city for the use and benefit of its employees); 94-78 (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection), and 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

(2) Health Insurance Participant Information

While "information relating to an insurance program participant's medical condition is protected from disclosure... there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants." Inf. Op. to Dockery, November 10, 2008.

Subsequent to the issuance of this opinion, the Legislature enacted an exemption for personal identifying information of a dependent child of a current or former officer or employee of an agency, whose dependent child (as defined in s. 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. However, while personal identifying information relating to the dependent child's participation in an agency's group insurance plan is now confidential, personal identifying information relating to the current or former officer's or employee's participation in such plan is subject to disclosure. Cf. s. 110.12301(3), F.S., providing confidentiality for records collected for purposes of dependent eligibility verification services conducted

for the state group insurance program and held by the Department of Management Services.

p. Payroll Deduction Records

There is no general exemption from disclosure that applies to agency payroll deduction records. However, public school system employee payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. See AGO 09-11 (tax information [such as Federal Withholding Tax Deduction, FICA Tax Deduction and the Medicare Tax Deduction] of a public school system employee would appear to constitute payroll deduction records and would be confidential and exempt from disclosure pursuant to s. 1012.31[3][a]4., F.S.).

q. Retiree Lists

The names and addresses of retirees are confidential and exempt from s. 119.07(1), F.S., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled or list form except to public agencies engaged in official business, to collective bargaining agents or to retiree organizations for official business use. Section 121.031(5), F.S. "Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired." Id. Cf. s. 121.4501(19), F.S. (personal identifying information of members in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt).

Section 121.021(60), F.S., defines the term "retiree" to mean "a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member." Accordingly, the s. 121.031(5) exemption does not apply to employees who are participants in the Deferred Retirement Option Program (DROP); DROP participants "are not retirees since they have not terminated their employment." *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County*, No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007), available online in the Cases database at the open government site at myfloridalegal.com.



r. Salary Records

Salary and other information relating to compensation is subject to disclosure. *Lewis v. Schreiber*, No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), per curiam affirmed, 611 So. 2d 531 (Fla. 4th DCA 1992), available online in the Cases database at the open government site at myfloridalegal.com. Accord AGOs 80-92 and 73-30.

s. Travel Records

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s. 119.071[5][b], F.S.) or social security numbers (ss. 119.071[4] a] and [5][a]F.S). See *Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980). See also AGO 72-356 (travel itineraries and plane reservations for use of state aircraft are public records). Cf. *Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2019), finding that premature disclosure of prospective information relating to the Governor's detailed schedule and travel plans would reveal surveillance techniques, procedures, or personnel which are exempt pursuant to s. 119.071(2)(d), F.S.

t. Undercover Personnel of Criminal Justice Agencies

Please refer to the discussion of this topic on page 120.

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Footnotes

Note: In AGO 96-57, the Attorney General's Office concluded that this exemption should be construed as including personnel whose duties include both revenue collection and enforcement, as opposed to those personnel whose duties include only revenue collection or only revenue enforcement.



2-C-19 | SECURITY SYSTEM INFORMATION AND BLUEPRINTS**a. Blueprints**

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the structure, or upon a showing of good cause to a court. Section 119.071(3)(b)3., F.S. Exempt documents may also be released in order to comply with competitive bidding requirements. AGO 02-74. However, the entities or persons receiving such information must maintain its exempt status. Id. And see 119.071(3)(e), F.S. (exemption for records which depict structural elements of 911, E911 or public safety radio communications system infrastructure, structures, or facilities owned and operated by an agency; and geographical maps indicating actual or proposed locations of such infrastructure, structures, or facilities).

Section 119.071(3)(c)1., F.S., exempts building plans, blueprints, schematic drawings and diagrams which depict the internal layout or structural elements of various attractions, retail, resort, office, health care facilities, and industrial complexes and developments when the records are held by an agency. The exemption afforded by this statute, however, does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development of regional impact review. Section 119.071(3)(c)4., F.S. And see s. 119.071(3)(d) (information relating to the National Public Safety Broadband Network deemed confidential if disclosure would reveal information set forth in the exemption)

b. Security System Records

Information relating to the security or fire-safety systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, F.S. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations,

or consultations or portions thereof relating directly to or revealing such security systems or information. Id.

The exemption extends to information relating to or revealing the security or fire-safety systems for property owned or leased by the state or its political subdivisions, and also to such information concerning privately owned or leased property which is in the possession of an agency. AGOs 01-75 and 93-86, and Inf. Op. to Sherman, July 2, 2018. See also ss. 331.22, F.S. (airport security plans); s. 311.13, F.S. (seaport security plans); and 1004.0962(2), F.S. (campus emergency response of postsecondary education institution).

Section 119.071(3)(a), F.S., provides a similar exemption from disclosure for a security or fire-safety system plan of a private or public entity that is held by an agency. The information may be disclosed to the property owner or leaseholder; in furtherance of the official duties and responsibilities of the agency holding the information; to another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or upon a showing of good cause before a court.

The term "security or fire-safety system plan" includes: records relating directly to the physical security or fire-safety of the facility or revealing security or fire-safety systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security or fire-safety manuals. Id. Cf. *Marino v. University of Florida*, 107 So. 3d 1231 (Fla. 1st DCA 2013), in which the court rejected a university's contention that it could withhold the location of animal research facilities based on a determination that the nature of the public activities occurring at the facility subjects them to physical threats.

(1) Security System (Alarm) Permits and Applications

Sections 281.301 and 119.071(3)(a), F.S., prohibit public disclosure of the name and address of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." Critical

Intervention Services, Inc. v. City of Clearwater, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). Accord AGO 04-28.

(2) Surveillance Video Recordings

The term "security or fire-safety system plan" as used in s. 119.071(3)(a)1., F.S., includes "audio and visual presentations... relating directly to the physical security or fire-safety of the facility or revealing security or fire-safety systems." Video footage captured by city bus cameras "directly relates to and reveals information about a security system" and thus was determined to be confidential and exempt from disclosure by ss. 281.301 and 119.071(3)(a), F.S. Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc., 157 So. 3d 401 (Fla. 5th DCA 2015). The videos "reveal the capabilities—and as a corollary, the vulnerabilities" of the security system. *Id.* at 405. And see AGO 15-06, relying on Central Florida Regional Transportation Authority, and applying the exemption to surveillance tapes from a security system for a public transit authority building. Cf. Gonzalez v. State, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested records [CDs] the circuit court could not conclude that the contents were exempt from disclosure under s. 119.071(3)(a)2., or s. 281.301; nor could it determine whether redaction was possible); and City of Miami v. Blanco, 336 So. 3d 1268 (Fla. 3d DCA 2022) (trial court departed from essential requirements of law by failing to conduct in camera review before granting defendant's motion to compel and/or for a subpoena for video camera recordings taken at police station following his arrest; without an in camera inspection, the judge could not determine whether the video recordings fell within the security plan exemption).

Video footage from surveillance cameras at a high school "relates directly" to the security system at the school, including both its capabilities and its vulnerabilities, and thus is confidential and exempt from disclosure unless one of the exceptions to the exemption applies. State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc., 251 So. 3d 205 (Fla. 4th DCA 2018). As previously discussed on pages 153-154,

there are several exceptions to this confidentiality provision, including a court order issued upon a showing of good cause. In State Attorney's Office, the appellate court affirmed the trial judge's order mandating release of surveillance video from a school shooting where 17 students and staff were killed. The court found that the media had established good cause because the footage revealed the conduct of public servants in the discharge of their duties and also provided "insight" into the high school's security "net" that failed to protect the students and staff. Id. at 215.

By contrast, the First District overturned the trial court's determination that a news organization had shown good cause to obtain security footage from two correctional institutions. *Florida Department of Corrections v. Miami Herald Media Company*, 278 So. 3d 786 (Fla. 1st DCA 2019). At the hearing, the Miami Herald advised that it no longer needed the video recordings as they were no longer newsworthy. Nevertheless the court still found that the Herald had satisfied the statutory exception to confidentiality, noting the awards the journalist received for her reporting on prison issues, and that this fact, combined with the "extremely important right of freedom of the press" constituted good cause. The appellate court reversed, finding that the Herald "extinguished any claim to good cause when it unambiguously renounced its need for the video footage." 278 So. 3d at 790.

c. Cybersecurity

Section 119.01(2)(a), F.S., states that agencies "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." Cf. AGO 19-08 (pension board authorized to release nonpublic personnel information pursuant to a confidentiality agreement with a vendor conducting cybersecurity testing of the board's electronic data storage systems).

Accordingly, an agency is not required to provide direct access to the agency's electronic records through a hard drive provided by a requester, but must otherwise allow inspection and copying of such records in a manner which will accommodate the request, but protect from disclosure exempt or

confidential materials. AGO 13-07. And see *Rea v. Sansbury*, 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987), review denied, 513 So. 2d 1063 (Fla. 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this "does not mean that every means adopted by the county to facilitate the work of county employees ipso facto requires that the public be allowed to participate therein").

Section 119.0725(2), F.S., provides that the following information held by an agency is confidential: coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency; information relating to critical infrastructure; cybersecurity incident information reported pursuant to s. 282.318 or 282.3185, F.S.; network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources. Key terms used in this exemption such as "information technology" and "incident" are defined in s. 119.0725(1), F.S. Section 119.0725(5)(a), F.S., specifies agencies authorized to receive confidential information.

There are other exemptions which address cybersecurity issues. For example, s. 282.318(4), F.S., requires state agencies, as defined in the statute, to conduct risk assessments, and internal audits, as well as to develop policies and procedures to address cybersecurity issues. This section also contains exemptions for records relating to these functions. See s. 282.318(4)(d), (e), and (g), and (5), F.S. And see s. 119.0713(5)(a), F.S. (records relating to security of information technology systems of local government owned or operated utilities); s. 627.352 (Citizens Property Insurance Corporation) and s. 1004.055(1), F.S. (state postsecondary education institutions). Secure login credentials held by the Department of Highway Safety and Motor Vehicles 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. And see the discussion of the exemptions from the Sunshine Law for cybersecurity meetings found on pages 36-37.

d. School System Security

Section 943.082(1), F.S., requires the Florida Department of Law Enforcement to acquire 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 and exempt. Section 943.082(6), F.S. Any other information received through the reporting tool and held by the above agencies is exempt. *Id.* And see ss. 1004.0962(2), F.S. (campus emergency response held by a public postsecondary institution or specified agencies is exempt from disclosure); and 1004.055(1) (certain security incident information records held by state postsecondary education institution).

Any information that would identify whether an individual has been appointed as a safe school officer pursuant to s. 1006.12, F.S., held by a law enforcement agency, school district, or charter school is exempt. Section 1006.12(8), F.S. See also s. 119.071(3)(a), F.S., providing an exemption for agency security system plans, discussed on pages 155-156.

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2-C-20 | SOCIAL SECURITY NUMBERS

Section 119.071(5)(a)5., F.S., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements. See *Department of Health v. Rehabilitation Center at Hollywood Hills*, 259 So. 3d 979, 981 (Fla. 1st DCA 2018), noting the confidential status of social security numbers.

The exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. Section 119.071(5)(a)5., F.S. See, e.g., s. 193.114(5), F.S. (social security number submitted on an application for a tax exemption is confidential); and s. 119.071(4)(a), F.S. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure). And see s. 119.0714, F.S., regarding confidentiality of social security numbers in court records and in the official records.

Section 119.071(5)(a)6., F.S., authorizes disclosure of social security numbers under certain conditions. In addition, s. 119.071(5)(a)7.b., F.S., states that an agency may not deny a commercial entity engaged in "commercial activity," as defined in the exemption, access to social security numbers, "provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers." "Commercial activity" does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer not identifiable by the commercial entity. Section 119.071(5)(a)7.a.(I), F.S. See *Inf. Op. to Carland*, January 12, 2012 (teacher union's access to social security numbers maintained by school district limited to those social security numbers which will be used to verify the accuracy of numbers which the union has already received in the normal course of business) and AGO 19-08 (pension board authorized to release social security numbers pursuant to a confidentiality agreement to a vendor conducting cybersecurity testing on the board's electronic data storage systems).

The written request must be verified as provided in Florida law and meet the other requirements specified in the exemption. See *Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005). See also AGO 10-06 (agency authorized to request additional information that is reasonably



necessary to verify the identity of the commercial entity and the specific purposes for which the social security numbers will be used) .

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2-C-21 | TELEPHONE RECORDS

Records of telephone calls made from agency telephones are subject to disclosure in the absence of statutory exemption. See *Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991). See also *Media General Operation, Inc. v. Feeney*, 849 So. 2d 3, 6 (Fla. 1st DCA 2003), rejecting the argument that redaction of telephone numbers for calls made in the course of official business could be justified because disclosure could result in "unreasonable consequences" to the persons called. Cf. s. 119.071(5)(d), F.S. (all records supplied by a telecommunications company, as defined by s. 364.02, F.S., to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt). And see *Inf. to Michelson*, January 27, 1992 (cellular telephone company which provided city with statements reflecting amount of usage of cell phones by city staff rather than listing individual calls, did not appear to be an "agency" for purposes of Ch. 119, F.S., making company's records of individual calls subject to disclosure).

In *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com, the court stated that "as a matter of law, ... billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." Compare *Media General Operation, Inc. v. Feeney*, supra, in which the court held that under the circumstances of that case (involving access to records of cellular phone service provided by a political party for legislative employees), records of personal or private calls of the employees fell outside the definition of public records.

Additionally, in responding to a question from a police department regarding the provisions of Ch. 934, F.S., (interception of wire and oral communications), the Attorney General's Office advised that recordings of telephone conversations made by the police department in the usual course of business would be public records subject to the inspection, copying, and retention requirements of Ch. 119, F.S. AGO 12-07. "Any such public records would likewise be subject to the exemption and confidentiality provisions of the

Public Records Law.” Id. And see *Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 532 (Fla. 1st DCA 2015), review denied, 163 So. 3d 512 (Fla. 2015) (“No one disputes” that phone recordings of telephone calls made by the defendant while incarcerated and provided in criminal discovery were public records). Compare *Bent v. State*, 46 So. 3d 1047 (Fla. 4th DCA 2010) (recordings of personal telephone calls between minors in jail awaiting trial and third parties made by sheriff’s office are not public records when contents of the phone calls do not involve criminal activity or a security breach).

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2-C-22 | TRADE SECRETS AND PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION

a. Trade Secrets

Prior to the adoption of s. 119.0715, F.S., "documents submitted by a private party which constitute trade secrets as defined in s. 812.081," F.S., and which were stamped as confidential at the time of submission to an agency by a private party, were found to be not subject to public access. *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 784(Fla. 1st DCA 2003), review denied sub nom., *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005). And see *Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000).

Section 119.0715(2), F.S., now expressly provides that a "trade secret held by an agency" is confidential and exempt from disclosure. An agency may disclose a trade secret to an officer or employee of another agency or government entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities. Section 119.0715(3), F.S.

The term "trade secret" has the same meaning as in s. 688.002, F.S. Section 119.0715(1), F.S. Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The trial court's conclusion as to whether specific information constitutes a trade secret "rests on factual determinations that are assailable on appeal only if unsupported by competent, substantial evidence." *Sepro*, 839 So. 2d at 785. Cf. *Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, at 286 So. 3d at 859 (appellate court's role is to strictly construe the statutory definition of trade secret, and determine if competent, substantial evidence exists to support the factual findings of the trial court; the trial court's interpretation of a

statute and its application of the law to facts are subject to de novo review); *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017) (trial court's conclusion that insurance policy statistics submitted to the Office of Insurance Regulation had "independent economic value" within the meaning of the statutory definition of trade secret in s. 688.002(4), F.S., was supported by competent, substantial evidence). Cf. *Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court's finding that identities of investors and partners listed in applications to dispense medical cannabis were not trade secrets because the applicants "did not prove" that this information constituted a trade secret). And see *Barfield v. Florida Department of Health*, No. 2015 CA 003014 (Fla. 2d Cir. Ct. October 27, 2017), available online in the Cases database at the open government site at myfloridalegal.com (identity of consultants and related information contained in application to dispense medical cannabis qualified as a trade secret).

Similarly, the Fourth District upheld the trial court's determination, after an in camera inspection, that the aggregate number of airport pick-ups by a transportation service company and the sums of money paid to the county pursuant to a license agreement between the company and the county did not constitute trade secret information. *Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018). The court also found that a provision in the agreement requiring that the county maintain the confidentiality of the company's trade secret information and assert the exempt status in response to a public records request could not transform the information into a confidential record, citing to *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1208 (Fla. 1st DCA 2009). And see *James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.*, 41 So. 3d 386, 389 (Fla. 1st DCA 2010), rejecting a company's claim that information in customer complaints and company responses were trade secrets; noting that such information "is not secret and is not [the company's] to control;" *Allstate Floridian Ins. Co. v. Office of Ins. Regulation*, 981 So. 2d 617 (Fla. 1st DCA 2008), review denied, 987 So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance

Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court). Cf. Inf. Op. to Brown, March 11, 2016 (if an agency has received material that the sender has identified as "trade secret" and the material does not appear to meet the statutory definition of trade secret, the agency should advise the sender "that it has received a public request and will release the records and allow the sender to seek a protective order for those materials")

In addition to the general trade secret exemption in s. 119.0715, there are also specific trade secret exemptions. See, e.g., s. 570.544(8), F.S. (records of the Division of Consumer Services of the Department of Agriculture and Consumer Services are public records; however, customer lists, customer names, and trade secrets are confidential and exempt). Cf. AGO 09-02 (s. 581.199, F.S., prohibits authorized representatives of Division of Plant Industry in Department of Agriculture and Consumer Services from disclosing trade secrets obtained in carrying out their duties under Ch. 581 to any unauthorized person, provided such trade secrets fall within the statutory definition in s. 812.081, F.S., and owner of the trade secrets has taken measures to maintain the information's secrecy). More information about these exemptions may be found in the summaries located in Appendix D.

b. Proprietary Confidential Business Information

While there is no generic exemption for information claimed to be "proprietary confidential business information," the Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information held by certain agencies. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. See, e.g., s. 288.075, F.S. (economic development agency); s. 288.9626, F.S. (Florida Opportunity Fund); and ss. 364.183, 366.093, 367.156, and 368.108, F.S. (Public Service Commission). Cf. *Florida Power & Light Company v. Public Service Commission*, 31 So. 3d 860 (Fla. 1st DCA 2010) (listed categories of proprietary confidential business information in s. 366.093, F.S., as exempt are not exhaustive; information relating to employees' compensation warranted confidential classification as it would have impaired utility's competitive interests). Compare *Southern Bell*

Telephone and Telegraph Company v. Beard, 597 So. 2d 873, 876 (Fla. 1st DCA 1992) (Public Service Commission's determination that statutory exemption for proprietary confidential business information should be narrowly construed and did not apply to company's internal self-analysis was "consistent with the liberal construction afforded the Public Records Act in favor of open government"). And see AGO 08-14 (lease payment amount made by a private company to the city does not constitute "proprietary confidential business information").

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APPENDIX



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