

§112.3188 FS | CONFIDENTIALITY OF INFORMATION GIVEN TO THE CHIEF INSPECTOR GENERAL, INTERNAL AUDITORS, INSPECTORS GENERAL, LOCAL CHIEF EXECUTIVE OFFICERS, OR OTHER APPROPRIATE LOCAL OFFICIALS

(1) The name or identity of any individual who discloses in good faith to the Chief Inspector General or 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:

(a) 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

(b) Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

(2)

(a) Except as specifically authorized by s. 112.3189, 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 from s. 119.07(1) if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b), and an investigation is active.

(b) All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted pursuant to the administrative procedure established by ordinance by a local government as authorized by s. 112.3187(8)(b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b) and an investigation is active.

(c) Information deemed confidential under this section may be disclosed by the Chief Inspector General, agency inspector general, local chief executive officer, or other appropriate local official receiving the information if the recipient determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime. Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

1. An investigation is active under this section if:

a. It is an ongoing investigation or inquiry or collection of information and evidence and is continuing with a reasonable, good faith anticipation of resolution in the foreseeable future; or

b. All or a portion of the matters under investigation or inquiry are active criminal intelligence information or active criminal investigative information as defined in s. 119.011.

2. Notwithstanding sub-subparagraph 1.a., an investigation ceases to be active when:

a. The written report required under s. 112.3189(9) has been sent by the Chief Inspector General to the recipients named in s. 112.3189(9);

b. It is determined that an investigation is not necessary under s. 112.3189(5); or

c. A final decision has been rendered by the local government or by the Division of Administrative Hearings pursuant to s. 112.3187(8)(b).

3. Notwithstanding paragraphs (a), (b), and this paragraph, information or records received or produced under this section which are otherwise confidential under law or exempt from disclosure under chapter 119 retain their confidentiality or exemption.

4. Any person who willfully and knowingly discloses information or records made confidential under this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History. — s. 6, ch. 90-247; s. 1, ch. 91-150; s. 3, ch. 91-285; s. 2, ch. 93-57; s. 1, ch. 95-136; s. 2, ch. 95-153; s. 1, ch. 95-166; ss. 36, 37, ch. 96-406; s. 21, ch. 99-333.

¹*Note.* — As amended by s. 1, ch. 95-166, s. 2, ch. 95-153, and s. 36, ch. 96-406; this version of paragraph (2)(a) was also amended by s. 21, ch. 99-333. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, “Statutory Construction.” This section was also amended by s. 1, ch. 95-136, and s. 37, ch. 96-406, and that version reads:

112.3188 Confidentiality of information given to the Chief Inspector General and agency inspectors general. —

(1) The identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general 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 is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to anyone other than a member of the Chief Inspector General's or agency inspector general's staff without the written consent of the individual, unless the Chief Inspector General or agency inspector general determines that:

(a) The disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, provided that such information is disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime;

(b) The disclosure of the individual's identity is unavoidable and absolutely necessary during the course of the inquiry or investigation; or

(c) The disclosure of the individual's identity is authorized as a result of the individual consenting in writing to attach general comments signed by such individual to the final report required pursuant to s. 112.3189(6)(b).

(2)

(a) Except as specifically authorized by s. 112.3189 and except as provided in subsection (1), 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 Department of Legal Affairs, the Office of the Public Counsel, or the Department of Law Enforcement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution for an initial period of not more than 30 days during which time a determination is made whether an investigation is required pursuant to s. 112.3189(5)(a) and, if an investigation is determined to be required, until the investigation is closed or ceases to be active. For the purposes of this subsection, an investigation is active while such investigation is being conducted with a reasonable good faith belief that it may lead to the filing of administrative, civil, or criminal charges. An investigation does not cease to be active so long as the Chief Inspector General or the agency inspector general is proceeding with reasonable dispatch and

there is a good faith belief that action may be initiated by the Chief Inspector General or agency inspector general or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information as defined in s. 119.011, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report required pursuant to s. 112.3189(9) has been sent by the Chief Inspector General to the recipients specified in s. 112.3189(9)(c).

(b) Information deemed confidential under this subsection may be disclosed by the Chief Inspector General or agency inspector general receiving the information if the Chief Inspector General or agency inspector general determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, and such information may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

(3) Information or records obtained under this section which are otherwise confidential under law or exempt from disclosure shall retain their confidentiality or exemption.

(4) Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.