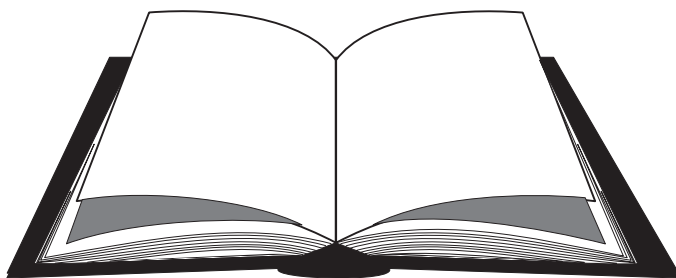


# Public Records



## A Guide For Law Enforcement Agencies



The Office of  
Attorney General Pam Bondi

2014 Edition

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## **A MESSAGE FROM ATTORNEY GENERAL PAM BONDI**

Law enforcement agencies face many challenges in carrying out their important responsibilities to investigate crimes and to secure the arrest and prosecution of those responsible for committing unlawful acts. In addition, criminal justice agencies have unique issues that arise under the Public Records Act. The Public Records Guide for Law Enforcement Agencies is designed to address these special concerns.

We are pleased, therefore, to present the 2014 edition of the Guide. This publication incorporates legislative changes through the 2013 legislative session and key court decisions and Attorney General Legal Opinions affecting the Public Records Act and law enforcement agencies. As in the past, the Guide is intended to be used in conjunction with the law enforcement agency's legal counsel, whose advice should be sought on specific issues facing the agency.

A more comprehensive analysis of the open government laws is contained in the Government in the Sunshine Manual. The Manual is prepared by the Attorney General's Office and published by the First Amendment Foundation. Information on how to obtain the Manual is available by contacting the First Amendment Foundation at (850) 224-4555. An electronic edition of the Sunshine Manual is available at the Office of the Attorney General's website at [myfloridalegal.com](http://myfloridalegal.com).

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	iii
<b>A. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION AND COPYING?.....</b>	<b>1</b>
1. Statutory definition .....	1
2. Drafts .....	1
3. Electronic and computer records .....	2
a. Electronic databases and files .....	2
b. E-Mail .....	2
c. Facebook .....	3
d. Text messages.....	3
4. Records made or received in connection with official business .....	3
<b>B. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT? .....</b>	<b>4</b>
<b>C. APPLICATION OF THE PUBLIC RECORDS ACT TO SPECIFIC RECORDS .....</b>	<b>5</b>
1. Arrest and crime reports and the exemption for active criminal investigative and intelligence information .....	5
a. Purpose and scope of exemption for active criminal investigative and intelligence information.....	5
b. What is active criminal investigative or intelligence information? .....	6
c. What information is not considered to be criminal investigative or intelligence information and must be released unless some other exemption applies? .....	7
d. Are records released to the defendant considered to be criminal investigative or intelligence information? .....	8
e. When is criminal investigative and	

---

<b>intelligence information considered inactive and thus no longer exempt from disclosure? .....</b>	<b>9</b>
<b>f. Does a criminal defendant’s public records request trigger reciprocal discovery?.....</b>	<b>12</b>
<b>g. Does the active criminal investigative information exemption apply if the information has already been made public? .....</b>	<b>12</b>
<b>h. May active criminal investigative information be shared with another criminal justice agency without losing its protected status? .....</b>	<b>12</b>
<b>i. Do other public records become exempt from disclosure simply because they are transferred to a criminal justice agency? ..</b>	<b>13</b>
<b>j. Is an entire report exempt if it contains some active criminal investigative or intelligence information? .....</b>	<b>15</b>
<b>k. When is criminal investigative or intelligence information received from other states or the federal government exempt from disclosure? .....</b>	<b>15</b>
<b>l. Is criminal investigative or intelligence information received prior to January 25, 1979, exempt from disclosure? .....</b>	<b>15</b>
<b>2. Autopsy records.....</b>	<b>16</b>
<b>3. “Baker Act” reports prepared by law enforcement officers .....</b>	<b>16</b>
<b>4. Bank account, debit and credit card numbers ..</b>	<b>17</b>
<b>5. Bids.....</b>	<b>17</b>
<b>6. Confessions.....</b>	<b>17</b>
<b>7. Confidential informants.....</b>	<b>17</b>
<b>8. Crime victim information .....</b>	<b>18</b>

---

a.	Addresses, telephone numbers and personal assets of domestic violence and other specified crime victims .....	19
b.	Amount of stolen property .....	19
c.	Child abuse and sexual offense victims ...	20
d.	Commercial solicitation of victims .....	22
e.	Documents received by a law enforcement agency .....	22
f.	Relocated victim or witness information . .....	22
g.	Photographs, video and audio recordings that depict or record the killing of a person .....	23
9.	Criminal history information .....	23
a.	Criminal history information generally...	23
b.	Sealed and expunged records.....	24
10.	Criminal Justice Standards and Training Commission (CJSTC) .....	25
11.	Emergency records .....	25
12.	Fingerprint records .....	27
13.	Juvenile offender records.....	27
14.	Litigation records .....	31
15.	Medical and patient records .....	33
16.	Motor vehicle records .....	33
17.	Pawnbroker records .....	35
18.	Personnel records .....	35
a.	Personnel records generally .....	35
b.	Collective bargaining agreements .....	36
c.	Application of the Public Records Act to specific personnel records .....	37
(1)	Annuity or custodial account activities .....	37

---

---

(2) Applications for employment, references, and resumes .....	37
(3) Complaints against law enforcement officers.....	37
(4) Deferred compensation .....	40
(5) Direct deposit .....	40
(6) Drug test results .....	40
(7) Employee assistance program .....	41
(8) Evaluations of employee performance..	41
(9) Examination questions and answer sheets .....	41
(10) Home addresses, telephone numbers, photographs and dates of birth of law enforcement personnel.....	42
(11) Medical information.....	44
(12) Payroll deduction records.....	45
(13) Retiree lists.....	45
(14) Salary records .....	45
(15) Travel records .....	45
(16) Undercover personnel .....	46
19. Polygraph records .....	46
20. Prison and inmate records .....	46
21. Security system information .....	47
22. Social security numbers .....	47
23. Surveillance techniques, procedures or personnel .....	48
24. Telephone records .....	48
<b>D. TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT INSPECTION AND COPYING OF PUBLIC RECORDS?.....</b>	<b>48</b>
1. May an agency impose its own conditions on access to or copying of public records?.....	48

---



- 
2. **What individuals are authorized to inspect and receive copies of public records? ..... 49**
  3. **Must an individual show a “legitimate interest” or “noncommercial interest” in public records before being allowed to inspect or copy same? ..... 50**
  4. **What agency employees are responsible for responding to public records requests? ..... 50**
  5. **Is an agency required to provide copies of public records if asked, or may the agency allow inspection only? ..... 51**
  6. **May an agency refuse to comply with a request to inspect or copy the agency’s public records on the grounds that the records are not in the physical possession of the custodian? ..... 52**
  7. **May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency? ..... 52**
  8. **May an agency refuse to allow inspection or copying of public records on the grounds that the request is “overbroad” or lacks specificity? ..... 52**
  9. **May an agency require that a request to inspect or copy public records be made in writing? ..... 53**
  10. **May an agency require that the requestor disclose his or her name or furnish background information to the custodian? ..... 53**
  11. **Is an agency required to answer questions about its public records or create a new record in response to a request for information? ..... 54**
  12. **Is an agency required to provide public records in the medium or format requested or**

---

	may the agency select the medium or format for production? .....	55
13.	When must an agency respond to a public records request? .....	57
14.	May an agency enter into a confidentiality agreement or refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the records? .....	58
15.	Must an agency state the basis for its refusal to release an exempt record? .....	59
16.	What options are available to an agency if a record contains both exempt and nonexempt information? .....	60
17.	May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights? ....	60
<b>E.</b>	<b>WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS? .....</b>	<b>60</b>
1.	When may an agency charge a fee for the mere inspection of public records? .....	60
2.	What are the statutory fees to obtain copies of public records? .....	61
3.	When may an agency charge a special service charge for extensive use of clerical or supervisory labor or extensive information technology resources? .....	62
4.	Is an agency required to respond to requests for information regarding costs to obtain public records? .....	64
5.	Does Ch. 119, F.S., exempt certain individuals (such as indigent persons or inmates) from paying statutory fees to obtain copies of public records? .....	65
6.	May an agency charge for development, travel	

---

---

or overhead costs?.....	65
7. May an agency require that production and copying of public records be accomplished only through a private company that acts as a clearinghouse for the agency's public records? .....	66
8. Should an agency charge sales tax when providing copies of public records?.....	66
9. Does s. 119.07(4), F.S., prescribe the fee that an agency may charge for furnishing a copy of a record to a person who is authorized to access an otherwise confidential record? ..	66
10. Department of Highway Safety and Motor Vehicles crash reports .....	67
<b>F. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING? .....</b>	<b>67</b>
1. Voluntary mediation program .....	67
2. Civil action.....	67
3. Criminal penalties .....	68
<b>G. WHAT ARE THE REQUIREMENTS FOR THE MAINTENANCE, STORAGE AND RETENTION OF PUBLIC RECORDS? .....</b>	<b>68</b>
1. Maintenance and storage of records .....	68
2. Delivery of records to successor .....	69
3. Retention and disposal of records.....	69
<b>END NOTES.....</b>	<b>71</b>
<b>APPENDIX .....</b>	<b>111</b>

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## **A. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION AND COPYING?**

### **1. Statutory definition**

Section 119.011(12), F.S., defines “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>1</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.<sup>2</sup> Portions of Ch. 119, F.S., the Public Records Act, that are discussed in this Guide may be found in the Appendix.

The term “public record” is not limited to traditional written documents. As the statutory definition states, “tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission” can all constitute public records.<sup>3</sup>

### **2. Drafts**

There is no “unfinished business” exception to the public inspection and copying requirements of Ch. 119, F.S. If the purpose of record prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, it is a public record, regardless of whether it is in final form or the ultimate product of an agency.<sup>4</sup>

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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 and working drafts of reports which have been furnished to a supervisor for review or approval.<sup>5</sup>

It follows then that such records are subject to disclosure unless the Legislature has specifically exempted the records from disclosure.<sup>6</sup>

### **3. *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 . . . .”<sup>7</sup>

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.<sup>8</sup>

Accordingly, electronic public records are governed by the same rule as written documents and other public records—the records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure.

#### **b. *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.<sup>9</sup>

Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records.<sup>10</sup>

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**c. Facebook**

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.<sup>11</sup> 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.<sup>12</sup>

**d. Text messages**

The Attorney General's Office advised the Department of State (which is statutorily charged with development of public records retention schedules) that the "same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies."<sup>13</sup> In response, the department revised its records retention schedule to note that text messages may be public records and that retention of text messages could be required depending upon the content of those texts.<sup>14</sup>

**4. *Records made or received in connection with official business***

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." Thus, the Florida Supreme Court found 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.<sup>15</sup>

Similarly, the mere fact that an e-mail is sent from a private e-mail

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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 in connection with official agency business and intended to perpetuate, communicate or formalize knowledge of some kind.

However, in concluding that the location of e-mails on a government computer does not control the application of Public Records Act, the 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.”<sup>16</sup>

## **B. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT?**

Section 119.011(2), F.S., defines “agency” to include:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including . . . any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The term “agency” as used in Ch. 119, F.S., is not limited to governmental entities. A private entity “acting on behalf of any public agency” is also subject to the Public Records Act. The Florida Supreme Court has stated that this broad definition of “agency” ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility.<sup>17</sup>

For example, a private corporation that operates and maintains a county jail pursuant to a contract with the county is “acting on behalf of” the county and must make available its records for the jail in accordance with Ch. 119, F.S.<sup>18</sup>



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## C. APPLICATION OF THE PUBLIC RECORDS ACT TO SPECIFIC RECORDS

### 1. *Arrest and crime reports and the exemption for active criminal investigative and intelligence information*

Arrest and crime reports are generally considered to be open to public inspection.<sup>19</sup> 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. Purpose and scope of exemption for active criminal investigative and intelligence information

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.<sup>20</sup>

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report.<sup>21</sup>

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.<sup>22</sup>

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 only 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*, “[t]here are many situations in which investigators have reasons for displaying

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information which they have the option not to display.”<sup>23</sup>

**b. What is 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.”<sup>24</sup>

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.”<sup>25</sup>

“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.”<sup>26</sup> For example, a court held that complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information.<sup>27</sup> Similarly, an autopsy report may constitute criminal investigative information.<sup>28</sup>

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.”<sup>29</sup>

“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

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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.<sup>30</sup>

**c. What information 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 the discussion on pages 27-31 relating to certain juvenile records) or the name, sex, age and address of the victim of a crime, except for a victim of a sexual offense or of child abuse, as provided in s. 119.071(2)(h), F.S.;
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), F.S. [providing an exemption from disclosure for criminal intelligence or investigative information which reveals the identity of a victim of a sexual offense or of child abuse], 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;

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6. Information 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.<sup>31</sup>

**d. Are records released to the defendant considered to be criminal investigative or intelligence information?**

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.<sup>32</sup> 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.<sup>33</sup>

For example, in *Satz v. Blankenship*,<sup>34</sup> 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.<sup>35</sup>

The only circumstances where criminal intelligence or investigative information can retain that status even though it has

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been made available to the defendant are:

- 1) If the information would reveal the identity of a victim of a sexual offense or child abuse pursuant to s. 119.071(2)(h), 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.<sup>36</sup>

**e. When is criminal investigative and intelligence information considered inactive and thus no longer exempt from disclosure?**

**(1) 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.”<sup>37</sup> Information in cases barred from prosecution by a statute of limitation is not active.<sup>38</sup>

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The definition of “active” requires “a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future.”<sup>39</sup> However, 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.<sup>40</sup>

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations.<sup>41</sup> The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> 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.

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.<sup>46</sup> The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute

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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.

## **(2) 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*.'"<sup>47</sup>

Thus a court ruled that 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."<sup>48</sup>

## **(3) 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.<sup>49</sup>

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active."<sup>50</sup>

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.<sup>51</sup>

## **f. Does a criminal defendant's public records request**

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### **trigger reciprocal discovery?**

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 post-conviction 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.<sup>52</sup>

#### **g. Does the active criminal investigative information exemption apply if the information has already been made public?**

It has been held that the criminal investigative exemption does not apply if the information has already been made public.<sup>53</sup> As stated by one court, once the 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.<sup>54</sup>

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents.<sup>55</sup> For example, 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.”<sup>56</sup>

#### **h. May active criminal investigative information be shared with another criminal justice agency without losing its protected status?**



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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.” Thus, a 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.<sup>57</sup>

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.<sup>58</sup>

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.’”<sup>59</sup>

**i. Do other public records become exempt from disclosure simply because they are transferred to a criminal justice agency?**

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.<sup>60</sup>

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.<sup>61</sup>

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Similarly, otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because records have been subpoenaed by and transferred to the state attorney's office.<sup>62</sup>

The Attorney General's Office also stated 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.<sup>63</sup>

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.<sup>64</sup>

In addition, s. 119.071(2)(c)2.a., F.S., states that 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. Pursuant to s. 119.071(2)(c)2.b., 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 request made by the law enforcement agency, the custodian's response to the request and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

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

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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.<sup>65</sup> 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.<sup>66</sup>

**j. Is an entire report exempt if it contains some active criminal investigative or intelligence 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 delete only that portion of the record for which an exemption is asserted and to provide the remainder of the record for examination.<sup>67</sup>

**k. When is criminal investigative or intelligence information received from other states or the federal government exempt from disclosure?**

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.<sup>68</sup>

**l. Is criminal investigative or intelligence information received prior to January 25, 1979, exempt from disclosure?**

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure.<sup>69</sup>

**2. Autopsy records**

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**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.<sup>70</sup>

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.”<sup>71</sup>

In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may apply to an autopsy report.<sup>72</sup>

**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.<sup>73</sup>

**3. “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. Thus, the report prepared by the officer pursuant to this statute is part of the patient’s clinical record and is confidential.

However, in an advisory opinion issued in 1993, the Attorney

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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.<sup>74</sup>

#### **4. 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.<sup>75</sup>

#### **5. Bids**

Section 119.071(1)(b), 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, whichever is earlier.

#### **6. 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.<sup>76</sup>

#### **7. 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

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active or may have, through other sources, been identified as such.<sup>77</sup>

However, a 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].”<sup>78</sup>

Similarly, a 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.<sup>79</sup> 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.”<sup>80</sup>

## **8. Crime 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),” are specifically excluded from the definition of criminal investigative or intelligence information.<sup>81</sup> Accordingly, victim information is considered to be public record in the absence of statutory exemption. A discussion of the exemptions which apply to crime victims follows.

### **a. Addresses, telephone numbers and personal assets of domestic violence and other specified crime victims**

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Section 119.071(2)(j)1., F.S. authorizes victims of *aggravated stalking, harassment, aggravated battery, or domestic violence* to file a written request for confidentiality of their addresses, telephone numbers and personal assets. Victims of sexual battery and aggravated child abuse are also included within this exemption; however, another statute — s. 119.071(2)(h)1., F.S., exempts *all* identifying information relating to the victims of these crimes; they are not required to make a written request. Thus, the requirement that the victim make a written request for confidentiality applies only to information not otherwise held confidential by law; the exemption supplements, but does not replace, other confidentiality provisions applicable to crime victims, such as the exemptions for the identity of child abuse or sexual battery victims.<sup>82</sup>

Such information shall cease to be exempt 5 years after the receipt of the written request. The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for confidentiality.<sup>83</sup>

This exemption allows a victim of the enumerated crimes to 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.<sup>84</sup> The s. 119.071(2)(j)1., F.S., exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity.<sup>85</sup>

There is no exception to the provisions of s. 119.071(2)(j)1., F.S., for copies of the police report that are sent to domestic violence centers; thus, the victim's address and telephone number must be deleted from the copy of the police report that is sent to a domestic violence center pursuant to s. 741.29, F.S., if the victim has made a written request for confidentiality pursuant to s. 119.071(2)(j)1., F.S.<sup>86</sup>

## **b. Amount of stolen property**

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or

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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.<sup>87</sup>

**c. Child abuse and sexual offense victims**

**(1) Law enforcement and prosecution records**

Section 119.071(2)(h)1., F.S., provides confidentiality for information which would reveal the identity of victims of sexual offenses prohibited in Chs. 794, 796, 800, 827 or 847, F.S., or of child abuse as defined in Ch. 827, F.S.<sup>88</sup>

The statute specifies the circumstances when a law enforcement agency is authorized to disclose the confidential information. For example, s. 119.071(2)(h)2.c., F.S., states that disclosure is authorized “to another governmental agency in the furtherance of its official duties and responsibilities.”

However, the identity of a victim who *died* from suspected abuse is not confidential.<sup>89</sup>

Section 119.071(2)(j)2., 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.<sup>90</sup>

In addition, the photograph, videotape or image of any part of the body of a victim of a sexual offense prohibited under s. 810.145, F.S., or Chs. 794, 796, 800, 827, or 847, F.S., is



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confidential and exempt, regardless of whether the photograph, videotape or image identifies the victim.<sup>91</sup>

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 (child abuse); 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.<sup>92</sup>

## **(2) Department of Children and Families abuse records**

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 (Department) 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.<sup>93</sup>

Confidential abuse information received by law enforcement agencies from the Department retains its confidential status in the hands of the receiving agency.<sup>94</sup> However, s. 39.202(4), F.S., authorizes the Department 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.

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**d. 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 non-confidential 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.<sup>95</sup> 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.”<sup>96</sup> A willful and knowing violation of this statute is a third-degree felony.<sup>97</sup>

**e. Documents received by a law enforcement agency**

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.<sup>98</sup> 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; accordingly, this exemption does not apply to police reports.<sup>99</sup>

**f. 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.<sup>100</sup>

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**g. Photographs, video and audio recordings that depict or record the killing of a person**

A photograph, video, or audio recording that depicts or records the killing of a person is confidential and may not be listened to, viewed, or copied, except as authorized in the exemption.<sup>101</sup> The term “killing of a person” means “all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.”<sup>102</sup>

**9. Criminal history information**

**a. Criminal history information generally**

Except where specific exemptions apply, criminal history information is a public record.<sup>103</sup>

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 history

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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.<sup>104</sup>

Section 943.053(3), 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.

#### **b. 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.<sup>105</sup>

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, information, or other formal criminal charges and the disposition of those charges.<sup>106</sup> However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S.<sup>107</sup>

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.<sup>108</sup> Similar provisions exist relative to disclosure of sealed criminal history records.<sup>109</sup>

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.<sup>110</sup>

### **10. Criminal Justice Standards and Training**

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## ***Commission (CJSTC)***

Section 943.1395(6)(b), F.S., provides that a report of misconduct and all records or information provided to or developed by the CJSTC during the course of its investigation are exempt, and except as otherwise provided by law, such information is subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive.

However, a police report of a departmental criminal investigation of an officer is a public record after the investigation has been concluded regardless of whether a copy of the report is forwarded to the CJSTC.<sup>111</sup>

### ***11. Emergency records***

#### **a. Emergency “911” records**

Section 365.171(12), F.S., provides, with limited exception, 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.

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.<sup>112</sup> And, identifying information derived from a criminal investigation and placed in an offense report by a law enforcement agency does not fall within the exemption.<sup>113</sup>

A tape recording of a “911” call is a public record which is subject to disclosure after the deletion of the exempt information.<sup>114</sup> This does not, however, preclude the application of another exemption

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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.<sup>115</sup>

Moreover, s. 406.136, F.S., provides that an audio recording that records the “killing of a person” is confidential and exempt and may not be listened to or copied except as authorized in the exemption.<sup>116</sup>

**b. Emergency evacuation plans**

Section 119.071(3)(a), F.S., provides an exemption from disclosure for a security system plan of a private or public entity that is held by an agency. The term “security system plan” includes emergency evacuation plans and sheltering arrangements.<sup>117</sup>

**c. 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.<sup>118</sup>

**d. Emergency notification**

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency, including the person’s name, address, telephone number, e-mail address, or other electronic communication address, is exempt from disclosure requirements.<sup>119</sup>

**e. Emergency response plans**

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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 . . . .”

For example, a 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.<sup>120</sup>

**f. Special needs registry**

Records relating to the registration 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) are confidential and exempt, except such information is available to other emergency response agencies, as determined by the local emergency management director.<sup>121</sup>

Local law enforcement agencies shall be given complete shelter roster information upon request.<sup>122</sup>

**12. Fingerprint records**

Biometric identification information is exempt from s. 119.07(1), F.S.<sup>123</sup> The term “biometric identification information” means any record of friction ridge detail, fingerprints, palm prints, and footprints.<sup>124</sup>

**13. Juvenile offender records**

**a. 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), F.S., provides, in relevant part, that:

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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 Parole Commission, 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 may be disclosed only* to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Parole Commission, 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 order of the court. (e.s.)

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice.<sup>125</sup>

Thus, as a general rule, access to records of juvenile offenders is limited.<sup>126</sup>

However, the subject of juvenile offense records may authorize access to such records to others (such as a potential employer) by means of a release.<sup>127</sup> And, 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.<sup>128</sup>

However, 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.<sup>129</sup>

Confidential photographs of juveniles taken in accordance with



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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.”<sup>130</sup> 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.<sup>131</sup>

**b. Exceptions to confidentiality**

**(1) 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.<sup>132</sup>

**(2) 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., 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 if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- (b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- (c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s.

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985.556;

- (d) Taken into custody by a law enforcement officer for a violation of law subject to the provisions of s. 985.557(2)(b) or (d); or
- (e) Transferred to the adult system but sentenced to the juvenile system pursuant to s. 985.565

shall not be considered confidential and exempt from . . . s. 119.07(1) solely because of the child's age.

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 subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release.<sup>133</sup>

The expanded disclosure provisions apply only to juvenile records created after October 1, 1994, the effective date of the amendments to the juvenile confidentiality laws.<sup>134</sup>

### **(3) 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.<sup>135</sup>

### **(4) 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, provided that such rights do not interfere with the constitutional rights of the juvenile offender. Those entitled

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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.”<sup>136</sup>

#### **14. *Litigation records***

Note: The purpose of this section is to provide general background information on disclosure of attorney-client communications and attorney work product. The discussion is not intended to be a guide for resolving specific matters. The agency attorney should be consulted on any public records issue relating to attorney-client communications, work product or litigation involving the agency.

##### **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.<sup>137</sup>

##### **b. *Attorney work product***

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. This statute provides that records prepared by, or at the express direction of, an agency’s attorney which reflect a mental impression, conclusion, litigation strategy, or legal theory of the attorney or agency, and which were prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings are exempt from disclosure until the conclusion of the litigation or adversarial administrative proceedings.

##### **(1) *Attorney bills and payments***

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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, 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.<sup>138</sup>

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.<sup>139</sup> However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption.<sup>140</sup>

## **(2) Investigations**

Section 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product.<sup>141</sup> The exemption is narrower than the work product privilege recognized by the courts for private litigants.<sup>142</sup> In order to qualify for the work product exemption, the records must have been prepared exclusively for or in anticipation of imminent or pending *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.<sup>143</sup>

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.<sup>144</sup>

## **(3) Commencement and termination of exemption**

The exemption from disclosure provided by s. 119.071(1)(d), F.S., is *temporary* and limited in duration.<sup>145</sup> 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.<sup>146</sup>

In a criminal case, the “conclusion of the litigation” for purposes

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of the termination of the work product exemption occurs when the conviction and sentence have become final.<sup>147</sup> However, the state attorney may still claim the work product exemption for his or her current file in a pending motion for post-conviction relief because there is ongoing litigation with respect to those documents.<sup>148</sup>

## **15. Medical and patient records**

Patient records are generally protected from disclosure. For example, patient records in hospitals or 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.<sup>149</sup> Similarly, 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.<sup>150</sup>

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.<sup>151</sup> Thus, pre-death medical records in the possession of the medical examiner are not subject to public inspection.<sup>152</sup>

Similarly, there are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute.<sup>153</sup>

## **16. Motor vehicle records**

### **a. Crash reports**

Motor vehicle crash reports are confidential for a period of 60 days after the report is filed.<sup>154</sup> However, such reports may be

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made immediately available to the parties involved in the crash, their legal representatives, their insurance companies and agents, prosecutorial authorities, law enforcement agencies, county traffic operations, victim services programs, and certain print and broadcast media as described in the exemption.<sup>155</sup>

In addition, the statute provides that any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.<sup>156</sup>

To access a crash report within 60 days after the report is filed, 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, during the period of time that the information remains confidential and exempt."<sup>157</sup>

**b. 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).<sup>158</sup>

**c. Motor vehicle information contained in law enforcement records**

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The Attorney General's Office has stated that 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 the 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. Thus, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying.<sup>159</sup>

Similarly, the names of suspected "red light" violators are not protected; there is "clear evidence that [DPPA] was not intended to shield people from public access to information about their traffic infractions."<sup>160</sup>

### **17. 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.<sup>161</sup> 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.<sup>162</sup>

### **18. Personnel records**

#### **a. Personnel records generally**

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.<sup>163</sup>

Therefore, an agency is not authorized to "seal" disciplinary

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notices and thereby remove such notices from disclosure under the Public Records Act.<sup>164</sup> 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.<sup>165</sup>

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.<sup>166</sup>

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure.<sup>167</sup> 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.<sup>168</sup>

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.<sup>169</sup>

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.<sup>170</sup>

#### **b. Collective bargaining agreements**

A collective bargaining agreement may not make the personnel records of public employees confidential or exempt the same from the Public Records Act.<sup>171</sup> 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."<sup>172</sup>

Similarly, unless authorized by law, a city may not agree through



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collective bargaining to remove references to the initial proposed disciplinary action in an employee's personnel file when a settlement agreement results in a reduced disciplinary action.<sup>173</sup>

**c. Application of the Public Records Act to specific personnel records**

**(1) 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.<sup>174</sup>

**(2) Applications for employment, references, and resumes**

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers.<sup>175</sup> Similarly, communications from third parties are subject to disclosure.<sup>176</sup>

**(3) Complaints against law enforcement officers**

Section 112.533(2), 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.<sup>177</sup>

The term "law enforcement officer" is defined as any person, other than a chief of police, who is employed full 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

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this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S.<sup>178</sup>

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption.<sup>179</sup>

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.<sup>180</sup>

Thus, a circuit judge ordered a police department to provide the media with a copy of an unredacted incident report that identified a police officer involved in the shooting of an armed suspect.<sup>181</sup>

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.<sup>182</sup> 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.<sup>183</sup>

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.<sup>184</sup>

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.<sup>185</sup>

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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.<sup>186</sup>

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.<sup>187</sup> 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.<sup>188</sup>

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.<sup>189</sup>

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.<sup>190</sup>

Similarly, 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.<sup>191</sup>

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)."<sup>192</sup> In addition, a sheriff, police chief or other

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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.<sup>193</sup> The Attorney General's Office has issued several advisory opinions interpreting this statute.<sup>194</sup> However, in 2005, the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional.<sup>195</sup>

For information on the exemptions for whistleblower, discrimination, and ethics complaints directed against public officers and employees, please refer to the appropriate discussion in the Government in the Sunshine Manual which may be accessed online at [myfloridalegal.com](http://myfloridalegal.com). The Sunshine Manual also discusses s. 119.071(2)(k), F.S., enacted in 2013, and providing an exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees.

#### **(4) 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 are confidential and exempt.<sup>196</sup>

#### **(5) 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.<sup>197</sup>

#### **(6) 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.<sup>198</sup>

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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.<sup>199</sup> Section 440.102(8)(a), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program.<sup>200</sup>

### **(7) 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.<sup>201</sup>

### **(8) Evaluations of employee performance**

Evaluations of public employee performance, like other public records, are generally subject to disclosure. As the Florida Supreme Court has said: “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.”<sup>202</sup>

### **(9) 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.<sup>203</sup>

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.<sup>204</sup>

A person who has taken an examination has the right to review his or her own completed examination.<sup>205</sup> 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.<sup>206</sup>

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**(10) Home addresses, telephone numbers, photographs, dates of birth**

Section 119.071(4)(d)2., F.S., exempts but does not make confidential certain information relating to past and present law enforcement officers and their families by excluding from public inspection:

The home addresses, telephone numbers, social security numbers, dates of birth and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, . . . and the names, home addresses, telephone numbers, social security 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. . . .

The same exemptions also apply to current or former prosecutors.<sup>207</sup> Please refer to the Appendix, containing selected portions of Ch. 119, F.S., for a listing of other occupations and offices that are within the scope of this exemption.

**(a) 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.<sup>208</sup> 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.<sup>209</sup> 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.<sup>210</sup>

In other words, a police department, in deciding whether to release photographs of law enforcement personnel, should

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determine whether there is a statutory or substantial policy need for disclosure.<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup> 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.<sup>214</sup>

***(b) Application of s. 119.071(4)(d)2., F.S., exemption to 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.<sup>215</sup>

The provisions of s. 119.071(4)(d)3., 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."<sup>216</sup> 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.<sup>217</sup>

***(c) Application of exemption to agency-issued cellular telephones, prior home addresses and booking photographs***

The Attorney General's Office has advised that the cellular telephone numbers of telephones provided by the agency to law

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enforcement officers and used in performing law enforcement duties are not exempt from disclosure under s. 119.071(4)(d), F.S.<sup>218</sup>

In 2012, the Legislature amended s. 119.071(4)(d) 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 communication devices.” As originally introduced, the 2012 legislation would have also included “telephone numbers associated with agency cellular telephones” within the definition of “telephone numbers.”<sup>219</sup> However, this language was removed during the legislative process.

Section 119.071(4)(d), F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. Therefore, it would not exempt property no longer used as a home by law enforcement personnel.<sup>220</sup>

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 nonemploying agency which has received a written request to maintain the exempt status of the record, from the provisions of s. 119.07(1), F.S..<sup>221</sup> Thus, the custodian should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider the purpose of the exemption, i.e., the safety of law enforcement officers and their families.<sup>222</sup>

### **(11) Medical information**

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..<sup>223</sup>

Every employer who provides or administers health insurance



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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.<sup>224</sup>

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.<sup>225</sup>

### **(12) Payroll deduction records**

There is no general exemption from disclosure that applies to agency payroll deduction records.<sup>226</sup>

### **(13) 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.<sup>227</sup>

The 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."<sup>228</sup>

### **(14) Salary records**

Salary and other information relating to compensation is subject to disclosure.<sup>229</sup>

### **(15) Travel records**

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s.

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119.071[5][b], F.S.) or social security numbers (ss. 119.071[4][a] and [5][a]F.S.).<sup>230</sup>

### **(16) Undercover personnel**

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of a criminal justice agency is exempt from public disclosure.<sup>231</sup>

### **19. 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.<sup>232</sup>

However, exemption from disclosure found in s. 119.071(1)(a), F.S., for employment examination questions and answers applies to questions and answers contained in pre-employment polygraph records.<sup>233</sup>

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.<sup>234</sup>

### **20. Prison and inmate records**

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act.

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 or substance abuse records of inmates; preplea, pretrial intervention, presentence or postsentence investigative records; information regarding a person in the federal witness protection program; confidential or exempt Parole Commission records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies

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an executioner; and records that are otherwise confidential or exempt by law.<sup>235</sup>

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail.<sup>236</sup>

## **21. Security system information**

A security system plan or portion thereof that is held by an agency is confidential and exempt from public disclosure.<sup>237</sup>

However, the information may be disclosed to the property owner or leaseholder as well as to another state or federal agency to prevent, detect, or respond to terrorism.<sup>238</sup>

The term “security system plan” includes: records relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security manuals.<sup>239</sup>

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.<sup>240</sup>

In a more recent case, however, the appellate court said that the exemption did not permit a university to withhold the location of animal research facilities based on the university’s concern that the nature of the activities occurring at the facility subjects them to physical threats.<sup>241</sup>

## **22. Social security numbers**

Section 119.071(5)(a)5., F.S., states that social security numbers held by an agency are confidential and may not be disclosed except as authorized in the statute. For example, disclosure to another governmental agency is authorized if disclosure

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is necessary to the performance of the agency's duties and responsibilities.<sup>242</sup>

### **23. *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.<sup>243</sup>

### **24. *Telephone records***

Records of telephone calls made from agency telephones are generally subject to disclosure in the absence of statutory exemption.<sup>244</sup>

## **D. TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT INSPECTION AND COPYING OF PUBLIC RECORDS?**

### **1. *May an agency impose its own conditions on access to or copying of public records?***

Section 119.07(1)(a), F.S., establishes a right of access to public records in plain and unequivocal terms:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

The term "reasonable conditions" as used in s. 119.07(1)(a), F.S., "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to

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preclude review.”<sup>245</sup>

Accordingly, the “reasonable conditions” do not include a rule or condition of inspection which operates to restrict or circumvent a person’s right of access.<sup>246</sup> “The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records” under Ch. 119, F.S.<sup>247</sup>

For example, a city may not require the use of a code to review e-mail correspondence of city’s police department and human resources department.<sup>248</sup> Similarly, a policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian’s duty to protect public records from alteration or destruction, but to impose additional constraints on the requestor.<sup>249</sup>

Any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of doubtful validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject.<sup>250</sup> A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S.<sup>251</sup>

## **2. What individuals are authorized to inspect and receive copies of public records?**

Section 119.01, F.S., provides that “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*.” (e.s.) A public employee is a person within the meaning of Ch. 119, F.S. and, as such, possesses the same right of inspection as any other person.<sup>252</sup>

As one court has stated, “even though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida.”<sup>253</sup>

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**3. Must an individual show a “legitimate interest” or “noncommercial interest” in public records before being allowed to inspect or copy same?**

No. The requestor is not required to explain the purpose or reason for a public records request. “The motivation of the person seeking the records does not impact the person’s right to see them under the Public Records Act.”<sup>254</sup>

Thus, an agency is not authorized to impose conditions or limit access to public records based on a suspicion that the request may be for an improper purpose.<sup>255</sup> However, Florida Statutes impose criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes and for the criminal use of a public record or public records information.<sup>256</sup>

Similarly, “the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida’s public records law.”<sup>257</sup>

**4. What agency employees are responsible for responding to public records requests?**

**a. Custodian of public records**

Section 119.011(5), F.S., defines the term “custodian of public records” to mean “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”<sup>258</sup>

However, the courts have concluded that the statutory reference to the records custodian does not alter the “duty of disclosure” imposed by s. 119.07(1), F.S., upon “[e]very person who has custody of a public record.”<sup>259</sup>

Thus, the term “custodian” for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. But, “the mere fact

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that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07.”<sup>2560</sup> In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship.<sup>261</sup>

**b. Duty to acknowledge requests promptly and to respond in good faith**

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith.<sup>262</sup> A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.<sup>263</sup>

**5. Is an agency required to provide copies of public records if asked, or may the agency allow inspection only?**

“It is the policy of this state that all state, county, and municipal records are open for personal inspection *and copying* by any person.” (e.s.)<sup>264</sup> In addition, s. 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so . . . .” Finally, s. 119.07(4), F.S., requires the custodian to “furnish a copy or a certified copy of the record upon payment of the fee prescribed by law . . . .”

Similarly, if the requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the statutory fee, the agency must furnish by mail a copy of the record.<sup>265</sup>

**6. May an agency refuse to comply with a request to inspect or copy the agency’s public records on the grounds that the records are not in the physical**

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***possession of the custodian?***

No. An agency is not authorized to refuse to allow inspection of public records it made or received in connection with the transaction of official business on the grounds that the documents are in the actual possession of an agency or official other than the records custodian.<sup>266</sup>

Thus, in *Barfield v. Florida Department of Law Enforcement*,<sup>267</sup> the court held that an agency that received records from a private entity in the course of official business and did not make copies of the documents could not “return” them to the entity following receipt of a public records request. The court ordered the agency to demand the return of the records from the private entity so they could be copied for the requestor.<sup>268</sup>

**7. *May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency?***

No. The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption.<sup>269</sup> If information contained in the public record is available from other sources, a person seeking access to the record is not required to make an unsuccessful attempt to obtain the information from those sources as a condition precedent to gaining access to the public records.<sup>270</sup>

**8. *May an agency refuse to allow inspection or copying of public records on the grounds that the request is “overbroad” or lacks specificity?***

No. In *Lorei v. Smith*,<sup>271</sup> the court recognized that the “breadth of such right [to gain access to public records] is virtually unfettered, save for the statutory exemptions . . . .” Accordingly, in the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of records involved or



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possible inconvenience.

Note, however, s. 119.07(4)(d), F.S., authorizes a custodian to charge, in addition to the cost of duplication, a reasonable service charge for the cost of the extensive use of information technology resources or of personnel, if such extensive use is required because of the nature or volume of public records to be inspected or copied.<sup>272</sup>

As one court stated, if a public records request is insufficient to identify the records sought, the city has an affirmative duty to promptly notify the requestor that more information is needed in order to produce the records; it is the responsibility of the city and not the requestor to follow up on any requests for public records.<sup>273</sup>

**9. *May an agency require that a request to inspect or copy public records be made in writing?***

No. Chapter 119, F.S., does not authorize an agency to require that requests for records be in person or in writing.<sup>274</sup> As noted in AGO 80-57, a custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid.

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the *custodian* complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records.<sup>275</sup>

**10. *May an agency require that the requestor disclose his or her name or furnish background information to the custodian?***

A person requesting access to or copies of public records may

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not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records.<sup>276</sup>

Accordingly, an agency may not require an anonymous requestor to disclose his or her name, address, telephone number, or similar identifying information to the custodian prior to inspecting or receiving copies of public records.<sup>277</sup>

**11. *Is an agency required to answer questions about its public records or create a new record in response to a request for information?***

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records “at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records” provided that the required fees are paid.<sup>278</sup> However, a custodian is not required to give out *information* from the records of his or her office.<sup>279</sup> For example, the Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town.<sup>280</sup>

In other words, Ch. 119, F.S., provides a right of access to inspect and copy an agency’s existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Thus, the clerk of court is not required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request.<sup>281</sup>

However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs.<sup>282</sup>

**12. *Is an agency required to provide public records in***

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***the medium or format requested or may the agency select the medium or format for production?***

**a. Records available in more than one medium**

An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with Ch. 119, F.S.<sup>283</sup> Thus, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of s. 119.07(1), F.S.<sup>284</sup>

**b. Reformatting records**

As stated in *Seigle v. Barry*,<sup>285</sup> the intent of Ch. 119, F.S., is “to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers.” Accordingly, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor.<sup>286</sup>

Thus, the Attorney General’s Office concluded that a school district was not required to furnish electronic public records in an electronic format other than the standard format routinely maintained by the district.<sup>287</sup>

Despite the general rule, agency may be required to provide access to electronic records through a specially designed program, prepared by or at the expense of the requestor, where:

- 1) available programs do not access all of the public records stored in the computer’s data banks; or
- 2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or
- 3) for any reason the form in which the information is

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proffered does not fairly and meaningfully represent the records; or

- 4) the court determines other exceptional circumstances exist warranting this special remedy.<sup>288</sup>

For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium that is not routinely used by the agency, or if it elects to compile information that is not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4), F.S. (authorizing imposition of a special service charge if extensive information technology resources or labor are required).<sup>289</sup>

### **c. Remote access**

Section 119.07(2)(a), F.S., states that “[a]n additional means of inspecting or copying public records,” a custodian may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.<sup>290</sup> Thus, an agency is authorized, but not required, to permit remote electronic access to public records.

Section 119.07(2)(b), F.S., requires the custodian to provide safeguards to protect the contents of the public records from unauthorized electronic access or alteration and to prevent the disclosure or modification of those portions of the records which are exempt from disclosure.

Unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. However, fees for remote electronic access provided to the general public must be in accordance with the provisions of s. 119.07, F.S.<sup>291</sup>

## **13. When must an agency respond to a public records**

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***request?***

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith.<sup>292</sup> The Public Records Act, however, does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted under Ch. 119, F.S., “is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.”<sup>293</sup>

A municipal policy which provides for an automatic delay in the production of public records is impermissible.<sup>294</sup>

Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records.<sup>295</sup>

Similarly, the Attorney General’s Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote.<sup>296</sup>

**a. Delay in response**

An agency’s unreasonable and excessive delays in producing public records can constitute an unlawful refusal to provide access to public records.<sup>297</sup>

For example, an appellate court ordered a trial judge to hold a hearing on a public records complaint challenging a state attorney’s policy requiring that all public records requests to inspect or copy case files be directed to the state attorney’s main office. The appellate court said that the trial judge must determine whether the policy “resulted in an unjustified delay that amounted to an unlawful refusal to comply with chapter 119,” when applied to a requestor who asked to see the records at a branch office where the requestor lives and where the records were located.<sup>298</sup>

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**b. Arbitrary time for inspection**

While an agency may restrict the hours during which public records may be inspected to those hours when the agency is open to the public, a custodian is not authorized to establish an arbitrary time period during which records may or may not be inspected.<sup>299</sup> Thus, an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act.<sup>300</sup> There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible.<sup>301</sup>

**c. Standing requests for production of records an agency may produce or receive in the future**

The Attorney General's Office has stated that upon receipt of a public records request, the agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, F.S. However, this mandate applies only to those documents in the custody of the agency at the time of the request; nothing in the Public Records Act appears to require that an agency respond to a so-called "standing" request for production of public records that it may receive or produce in the future.<sup>302</sup>

**14. May an agency enter into a confidentiality agreement or refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the records?**

An agency "cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements."<sup>303</sup>

For example, in *National Collegiate Athletic Association v. Associated Press*,<sup>304</sup> the court held that a confidentiality agreement

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entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA's secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records, stating that “[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private.”<sup>305</sup>

Moreover, to allow the maker or sender of records to dictate the circumstances under which the records are to be deemed confidential would permit private parties, as opposed to the Legislature, to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Ch. 119, F.S.<sup>306</sup>

Therefore, unless the Legislature has expressly authorized the maker of records received by an agency to keep the material confidential, the wishes of the sender or the agency in this regard cannot supersede the requirements of Ch. 119, F.S.<sup>307</sup>

**15. Must an agency state the basis for its refusal to release an exempt record?**

Yes. Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.<sup>308</sup>

However, in *City of St. Petersburg v. Romine ex rel. Dillinger*,<sup>309</sup> the court cautioned that the Public Records Act “may not be used in such a way to obtain information that the legislature has declared must be exempt from disclosure.” Thus, a request for agency records may not be phrased or responded to in terms of a request for the specific documents asked for and received by a law enforcement agency during the course of an active criminal

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investigation.<sup>310</sup>

**16. *What options are available to an agency if a record contains both exempt and nonexempt information?***

Where a public record contains some information which is exempt from disclosure, s. 119.07(1)(d), F.S., requires the custodian of the record to delete or excise only that portion or portions of the record for which an exemption is asserted and to provide the remainder of the record for examination.<sup>311</sup>

**17. *May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights?***

It is well established in Florida that “neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency.”<sup>312</sup>

**E. WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS?**

**1. *When may an agency charge a fee for the mere inspection of public records?***

Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation.<sup>313</sup> Thus, public information must be open for inspection without charge unless otherwise expressly provided by law.<sup>314</sup>

Section 119.07(4)(d), F.S., however, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable



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and based on the labor or computer costs actually incurred by the agency. The special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required or extensive use of information technology resources is required.<sup>315</sup>

In addition, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection.<sup>316</sup> In doing so, however, the county's policy should reflect no more than the actual cost of the personnel's time and be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records.<sup>317</sup> Moreover, it would be difficult to justify the imposition of a fee for extensive clerical or supervisory assistance if the personnel providing such assistance were simultaneously performing regular duties.<sup>318</sup>

## ***2. What are the statutory fees to obtain copies of public records?***

If no fee is prescribed elsewhere in the statutes, s. 119.07(4)(a)1., F.S., authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy.<sup>319</sup>

A charge of up to \$1.00 per copy may be assessed for a certified copy of a public record.<sup>320</sup>

For other copies, the charge is limited to the actual cost of duplication of the record.<sup>321</sup> The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication."<sup>322</sup> An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and

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overhead associated with their duplication.<sup>323</sup>

**3. When may an agency charge a special service charge for extensive use of clerical or supervisory labor or extensive information technology resources?**

Section 119.07(4)(d), F.S., states that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. When warranted, the special service charge applies to requests for both inspection and copies of public records.<sup>324</sup>

Thus, while an agency may not refuse to allow inspection or copying of public records based upon the number of records requested or the span of time which is covered by the public records request, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the agency may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel.<sup>325</sup>

**a. What does the term “extensive” mean?**

Section 119.07(4)(d), F.S., does not contain a definition of the term “extensive.” In 1991, a divided First District Court of Appeal upheld a hearing officer’s order rejecting an inmate challenge to a Department of Corrections rule that defined “extensive” for purposes of the special service charge to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material.<sup>326</sup>

Moreover, the statute mandates that the special service charge be “reasonable.” For example, in one case a court reviewed a challenge to a service charge that exceeded \$4,000 for staff time involved in responding to a public records request, and said that

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an “excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act.”<sup>327</sup> Accordingly, the court required the agency to “explain in more detail the reason for the magnitude of the assessment.”<sup>328</sup>

**b. What does the term “information technology resources” mean?**

“Information technology resources” is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training.<sup>329</sup>

The term does not include a videotape or a machine to view a videotape.<sup>330</sup> The fact that the request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, extensive use of such resources is required.<sup>331</sup>

**c. May an agency charge for the cost to review records for exempt information?**

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material.<sup>332</sup> However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task.<sup>333</sup>

**d. How should the labor cost be calculated?**

In *Board of County Commissioners of Highlands County v. Colby*,<sup>334</sup> the court concluded that an agency’s charge for labor in responding to an extensive public records request could include both the salary and benefits of the personnel providing the service.<sup>335</sup> Similarly, a court concluded that the agency could charge only a clerical rate for the time spent making copies, even if due to staff shortages, a more highly paid person did the work.<sup>336</sup>

The term “supervisory assistance” has not been widely interpreted. In one case, the circuit judge approved a rate based

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on an agency attorney's salary when the attorney was required to review exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions . . . ." <sup>337</sup>

**e. May an agency require a reasonable deposit or advance payment or must the agency produce the records and then ask for payment?**

Section 119.07(4)(a)1., F.S., states that the custodian of public records shall furnish a copy or a certified copy of the record "upon payment of the fee prescribed by law . . . ." <sup>338</sup>

In *Malone v. City of Satellite Beach*, <sup>339</sup> the court noted that a city's requirement of an advance deposit was contemplated by the Public Records Act. <sup>340</sup>

An agency may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. As stated by the court in *Lozman v. City of Riviera Beach*, <sup>341</sup> s. 119.07[4], F.S., "does not require the City to do any more than what it did in this case," i.e., require Lozman to pay the bill for the first group of records he requested before the city would make any further documents available.

**4. Is an agency required to respond to requests for information regarding costs to obtain public records?**

In order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests for information as to copying costs. <sup>342</sup>

Similarly, a court said that if an agency is asked for a large number of records, the fee should be communicated to the

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requestor before the work is undertaken.<sup>343</sup> “If the agency gives the requesting party an estimate of the total charge, or the hourly rate to be applied, the party can then determine whether it appears reasonable under the circumstances.”<sup>344</sup>

**5. Does Ch. 119, F.S., exempt certain individuals (such as indigent persons or inmates) from paying statutory fees to obtain copies of public records?**

Chapter 119, F.S., does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain copies of public records.<sup>345</sup>

An agency, however, is not precluded from choosing to provide informational copies of public records without charge.<sup>346</sup>

**6. May an agency charge for development, travel or overhead costs?**

An agency should not consider the furnishing of public records to be a “revenue-generating operation.”<sup>347</sup>

The Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records.<sup>348</sup> Similarly, an agency may not charge for travel time to obtain public records stored off-premises.<sup>349</sup> For example, if municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requestor the costs to retrieve the records.<sup>350</sup>

Nor may an agency assess fees designed to recoup the original cost of developing or producing the records.<sup>351</sup>

Therefore, unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by s. 119.07(4)(d), F.S., an agency may charge only the actual cost of duplication for copies of computerized public records.<sup>352</sup> The imposition of the service charge, however, is

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dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system.<sup>353</sup>

**7. *May an agency require that production and copying of public records be accomplished only through a private company that acts as a clearinghouse for the agency's public records?***

No. Although an agency may contract with private companies to provide information also obtainable through the agency, it may not abdicate its duty to produce such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services.<sup>354</sup> The agency is the custodian of its public records and, upon request, must produce such records for inspection and copy such records at the statutorily prescribed fee.<sup>355</sup>

**8. *Should an agency charge sales tax when providing copies of public records?***

No. The sales tax imposed pursuant to s. 212.05, F.S., is not applicable to the fee charged for providing copies of records under s. 119.07, F.S.<sup>356</sup>

**9. *Does s. 119.07(4), F.S., prescribe the fee that an agency may charge for furnishing a copy of a record to a person who is authorized to access an otherwise confidential record?***

Unless another fee to obtain a particular record is prescribed by law, an agency may not charge fees that exceed those in Ch. 119, F.S, when providing copies of confidential records to persons who are authorized to obtain them.<sup>357</sup>

**10. *Department of Highway Safety and Motor Vehicles***

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### ***crash reports***

In the absence of statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from law enforcement agencies. However, there are specific statutes which apply to fees to obtain copies of reports from the *Department of Highway Safety and Motor Vehicles*.<sup>358</sup>

## **F. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING?**

### **1. *Voluntary mediation program***

Section 16.60, F.S., establishes an informal mediation program within the Office of the Attorney General as an alternative for resolution of open government disputes. For more information about the voluntary mediation program, please contact the Office of the Attorney General at the following address: The Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; telephone (850)245-0140; or you may visit the Office of the Attorney General website: [www.myfloridalegal.com](http://www.myfloridalegal.com).

### **2. *Civil action***

A person denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, F.S. Before filing a lawsuit, the petitioner must have furnished a public records request to the agency.<sup>359</sup>

Section 119.11(1), F.S., mandates that actions brought under ch. 119 are entitled to an immediate hearing and take priority over other pending cases.

Section 119.12, F.S., provides that if a civil action is filed against an agency to enforce the provisions of this chapter and the court determines that the agency unlawfully refused to permit

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a public record to be inspected or copied, the court shall assess and award against the agency responsible the reasonable costs of enforcement including reasonable attorney's fees. A successful pro se litigant is entitled to reasonable costs under this section.<sup>360</sup>

"[A]ttorney's fees are awardable for unlawful refusal to provide public records under two circumstances: first, when a court determines that the reason proffered as a basis to deny a public records request is improper, and second, when the agency unjustifiably fails to respond to a public records request by delaying until after the enforcement action has been commenced."<sup>361</sup>

### **3. Criminal penalties**

Section 119.10(1)(b), F.S., states that a public officer who knowingly violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding \$500.<sup>362</sup>

## **G. WHAT ARE THE REQUIREMENTS FOR THE MAINTENANCE, STORAGE AND RETENTION OF PUBLIC RECORDS?**

### **1. Maintenance and storage of records**

All public records should be kept in the buildings in which they are ordinarily used.<sup>363</sup> Moreover, insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.<sup>364</sup>



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Records that are in need of repair, restoration, or rebinding may be authorized by the head of the governmental entity to be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.<sup>365</sup>

Thus, as a general rule, public records may routinely be removed from the building or office in which such records are ordinarily kept only for official purposes.<sup>366</sup> The retention of such records in the home of a public official, however, would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records.<sup>367</sup>

## **2. *Delivery of records to successor***

Section 119.021(4)(a), F.S., provides that whoever has custody of public records shall deliver such records to his or her successor at the expiration of his or her term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State.<sup>368</sup>

## **3. *Retention and disposal of records***

### **a. *Retention schedules for public records***

Section 119.021(2)(a), F.S. requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules.<sup>369</sup>

Section 257.36(6), F.S., states that a “public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division.” Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee’s consent, during the

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course of resolving collective bargaining grievances, except in accordance with the statutory restrictions on disposal of records.<sup>370</sup>

**b. Exempt records**

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, the Attorney General’s Office concluded that the City of Hollywood could not destroy or dispose of licensure, certification, or employment examination question and answer sheets except as authorized by statute. An exemption only removes the records from public access requirements, it does not exempt the records from the other provisions of Ch. 119, F.S., such as those requiring that public records be kept in a safe place or those regulating the destruction of public records.<sup>371</sup>

Moreover, if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying, the requested record may not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was made to the custodian; if a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.<sup>372</sup>

**c. Evidence obtained by law enforcement agencies**

Documentary evidence obtained by a police department is a public record subject to retention schedules approved by the division.<sup>373</sup>

However, “the disposition of evidence *not* constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency’s determination that it is no longer needed.”<sup>374</sup>

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## ENDNOTES

- 1 *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
- 2 *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).
- 3 *Cf. Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records because in order to constitute a “public record” for purposes of Ch. 119, “the record itself must be susceptible of some form of copying”).
- 4 *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
- 5 The public records status of uncirculated personal notes prepared for the personal use of the writer can be more difficult to determine. *Compare The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002) (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’”); and 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”) with *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007) (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 agency attorney should be consulted on any question about the

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public records status of handwritten personal notes.

- 6 *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.
- 7 *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).
- 8 AGO 89-39.
- 9 As the court stated in *Rhea v. District Board of Trustees of Sante Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013): “electronic communications, such as e-mail, are covered [by the Public Records Act] just like communications on paper.” *Accord* AGO 01-20. *And see* 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.”
- 10 *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 of the Department of State.
- 11 AGO 09-19.
- 12 *Id.*
- 13 Inf. Op. to Browning, March 17, 2010.

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- 14 See General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at the Department of State website.
  - 15 *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). See also *Bent v. State*, 46 So. 3d 1047, 1050 (Fla. 4th DCA 2010) (sound recordings made by sheriff’s office of inmate personal telephone calls to friends and family which do not involve “criminal activity or a security breach” are not public records because the “recordings do not perpetuate or formalize knowledge in connection with official action”).
  - 16 *State v. City of Clearwater*, at 151n.2.
  - 17 *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).
  - 18 *Times Publishing Company v. Corrections Corporation of America*, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *affirmed per curiam*, 611 So. 2d 532 (Fla. 5th DCA 1993). And see *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) (medical services); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296, 298 (Fla. 2d DCA 1992) (a city may not allow a private entity to maintain physical custody of polygraph chart used in police internal affairs investigation to circumvent Ch. 119, F.S.). And note s. 119.0701, F.S., enacted in 2013, requiring that agency contracts for services with “contractors” as defined in the statute must contain specific provisions regarding the contractor’s compliance with public records laws.
  - 19 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).

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- 20 *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).
- 21 AGO 91-74. *See also Palm Beach Daily News v. Terlizzese*, No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and uncensored 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.
- 22 *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).
- 23 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991). *And see* AGO 90-50. *Cf.* s. 838.21, F.S.
- 24 Section 119.011(3)(a), F.S.
- 25 Section 119.011(3)(d), F.S.
- 26 Section 119.011(3)(b), F.S.
- 27 *See Rose v. D'Alessandro*, 380 So. 2d 419 (Fla. 1980).
- 28 *See* AGO 78-23.
- 29 Section 119.011(3)(d), F.S.
- 30 Section 119.011(4), F.S.
- 31 *See* s. 119.011(3)(c)3., F.S.
- 32 *See* s. 119.011(3)(c)5., F.S.
- 33 *See Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied* sub nom., *Gillum*
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- v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) (all information given or required to be given to defendants is disclosable to the public when released to defendants or their counsel pursuant to the rules of discovery). *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).
- 34 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied*, 413 So. 2d 877 (Fla. 1982).
- 35 *See also* *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986); *News-Press Publishing Co. Inc. v. D’Alessandro*, No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996) (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).
- 36 *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
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to protect the defendant's constitutional rights as described in *Miami Herald Publishing Company v. Lewis*, *supra*). Cf. *Times Publishing Co. v. State*, 903 So. 2d 322 (Fla. 2d DCA 2005).

- 37 Section 119.011(3)(d)2., F.S.
- 38 *Id.*
- 39 *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994).
- 40 *Id.* at 1016-1017.
- 41 *See Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).
- 42 *Id.* at 1131.
- 43 *Barfield v. City of Fort Lauderdale Police Department*, *supra*.
- 44 *Id.* *See also News-Press Publishing Co., Inc. v. Sapp*, 464 So. 2d 1335 (Fla. 2d DCA 1985) and *Wells v. Sarasota Herald Tribune Company, Inc.*, 546 So. 2d 1105 (Fla. 2d DCA 1989).
- 45 *News-Press Publishing Co., Inc. v. McDougall*, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992).
- 46 *Metropolitan Dade County v. San Pedro*, 632 So. 2d 196 (Fla. 3d DCA 1994). *And see Mobile Press Register, Inc. v. Witt*, 24 Med. L. Rptr. 2336, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996) (ordering 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).
- 47 *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), quoting s. 119.011(3)



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- (d)1., F.S. See *Barfield v. Orange County, Florida*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). See also AGO 94-48.
- 48 *Christy v. Palm Beach County Sheriff's Office*, *supra*.
- 49 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).
- 50 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).
- 51 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).
- 52 *Henderson v. State*, 745 So. 2d 319 (Fla. 1999).
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- 53 *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).
- 54 *See Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988).
- 55 *Arbelaez v. State*, 775 So. 2d 909, 918 (Fla. 2000).
- 56 *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997).
- 57 *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). *Accord Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998).
- 58 AGO 96-36.
- 59 *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.
- 60 *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).
- 61 AGO 88-25.
- 62 AGO 92-78.
- 63 Inf. Op. to Theobald, November 16, 2006.
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- 64 AGO 01-75.
- 65 AGO 06-04.
- 66 *Id.* See also Inf. Op. to Theobald, November 16, 2006.
- 67 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.”
- 68 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).
- 69 Section 119.071(2)(a), F.S. See *Satz v. Gore Newspapers Company*, 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981).
- 70 AGO 78-23. Cf. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records).
- 71 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).
- 72 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

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investigative information exemption to information contained in autopsy records.

- 73 See AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. *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.)
- 74 AGO 93-51.
- 75 Section 119.071(5)(b), F.S.
- 76 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. *But see Times Publishing Company v. State*, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), in which the appellate court held that a trial judge’s order sealing portions of records of police interviews with the defendant did not constitute a departure from the essential requirements of law; however, portions of the interview transcript and tape which did not “directly relate to [the defendant’s] participation in the crimes” did

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not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S., and must be released.

- 77 *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) (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.).
- 78 *Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994). *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d at 1368.
- 79 *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998).
- 80 *Id.*
- 81 *See* s. 119.011(3)(c)2., F.S.
- 82 *See* AGO 96-82.
- 83 *See* AGO 96-82. *See also* s. 741.30(3)(b), F.S. (petitioner

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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); and s. 787.03(6)(c) (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), and ss. 741.30(8) and 784.06(8), F.S.

- 84 *Id.*
- 85 *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).
- 86 AGO 02-50. Section 741.29(2), F.S. provides that a copy of the initial report of an incident of domestic violence, excluding victim/witness statements or other materials that are part of the active criminal investigation as defined in Ch. 119, F.S., must be sent to the nearest locally certified domestic violence center within 24 hours of the law enforcement agency's receipt of the report.
- 87 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."
- 88 Section 119.071(2)(h)1.F.S. Thus, 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 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).
- 89 AGO 90-103.

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- 90 Section 119.071(2)(j)2., F.S.
- 91 Section 119.071(2)(h)1.c, F.S.
- 92 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). *And see* s. 794.026(1), F.S.
- 93 *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).
- 94 Section 39.202(1), and (2)(b), F.S. *See* Inf. Op. to Russell, October 24, 2001.
- 95 Section 119.105, F.S.
- 96 *Id.*
- 97 Section 119.10(2)(b), F.S.
- 98 The statute 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.”
- 99 AGO 90-80.
- 100 Section 914.27, F.S.
- 101 Section 406.136, F.S. *See also* s. 406.135, F.S.
- 102 Section 406.136(1), F.S. A circuit court has concluded that the exemption may apply to crime scene photographs of homicide victims. *State v. Schenecker*, No. 11-CF-001376A
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(Fla. 13th Cir. Ct. August 3, 2011), *cert. denied sub. nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011).

103 AGO 77-125; Inf. Op. to Lymn, June 1, 1990. *And see* AGO 97-09.

104 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.

105 *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).

106 AGO 02-68.

107 *Id.* *And see* AGO 00-16.

108 Section 943.0585(4), F.S.

109 Section 943.059(4), F.S.

110 AGO 94-49.

111 AGO 96-05.

112 *See* AGO 93-60.

113 AGO 11-27.

114 AGO 93-60.

115 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



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confidentiality of exempt personal information contained in “911” radio transmissions).

- 116 The term “killing of a person” is defined to mean all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.” Section 406.136(1), F.S.
- 117 *And see* s. 119.071(2)(d), F.S.
- 118 AGO 86-97. *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).
- 119 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)(c)1. and 2., F.S. (emergency contact information contained in a Department of Highway Safety and Motor Vehicles motor vehicle record 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).
- 120 *See Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885 (Fla. 3d DCA 2005), 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.”
- 121 Section 252.355(5), F.S.

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122 *Id.*

123 Section 119.071(5)(g), F.S.

124 *Id.*

125 *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records.

126 *See, e.g.,* Inf. Op. to Galbraith, April 8, 1992; and Inf. Op. to Wierzbicki, April 7, 1992. *And see* AGO 07-19, stating that in a juvenile misdemeanor case where the provisions of s. 985.04(2), F.S., are not applicable, the sheriff's office is not authorized to reveal the names and addresses of the parents of the juvenile offender when asked for in a public records request. *And see G.G. v. Florida Department of Law Enforcement*, 97 So. 3d 268, 274 (Fla. 1st DCA 2012) ("only the arrest records of those juveniles who the legislature has designated in s. 985.04[2] have lost their confidential status").

127 AGO 96-65.

128 AGO 97-28.

129 *New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003). *See* s. 985.04(7)(a), F.S., providing confidentiality for records in the custody of the department regarding children.

130 Section 985.11(1)(b), F.S.

131 AGO 96-80. *Cf. Barfield v. Orange County, Florida*, No. C192-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

132 Section 985.11(3), F.S.

133 AGO 01-64.

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- 134 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.*
- 135 Section 985.04(4)(a), F.S. *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 and supervision of the department).
- 136 *Id.* *And see* ss. 985.04(3) and 960.001(8), F.S., authorizing similar disclosures to victims. *Cf. Harvard v. Village of Palm Springs*, 98 So. 3d 645 (Fla. 4th DCA 2012) (authorization in s. 985.04[3], F.S., allowing release of juvenile offense report to victim is permissive not mandatory).
- 137 *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.).
- 138 AGO 85-89. *Accord* AGO 00-07.
- 139 AGO 85-89.
- 140 *Id.*
- 141 AGO 91-75.
- 142 AGO 85-89.
- 143 *See, e.g., Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007), cert. denied, 553 U.S. 1059 (2008). *See also* AGO 91-75.
- 144 *See Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995). The court also said that the exemption now found at s. 758.28[16][b], F.S., for risk management files did not apply.
- 145 *City of North Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218 (Fla. 1985)
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- 146 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).
- 147 *State v. Kokal*, 562 So. 2d 324 (Fla. 1990).
- 148 See *Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993) (state attorney not required to disclose information from a current file relating to a postconviction relief motion). The Florida Supreme Court, however, has noted the state’s obligation in a criminal case to “disclose any exculpatory document within its possession or to which it has access, even if such document is not subject to the public records law. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).” *Walton v. Dugger*, 634 So. 2d at 1062. Accord *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).
- 149 Section 395.3025(4), (5), (7) and (8), F.S.
- 150 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).
- 151 See ss. 395.3025(7) (hospital patient records), and 456.057(12), F.S. (health care practitioner patient records).
- 152 *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997).
- 153 See 381.004, 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. 384.287, F.S.
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- 154 Section 316.066(2)(a), F.S.
- 155 Section 316.066(2)(b),F.S. The owner of a vehicle involved in a crash is among those authorized to receive a copy of the crash report immediately. AGO 01-59.
- 156 Section 316.066(2)(c), F.S. Cf. AGO 06-11 (fire department that is requesting crash reports in order to seek reimbursement from the at-fault driver, does not fall within the scope of this provision authorizing immediate access to the reports).
- 157 Section 316.066(2)(d), F.S. 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.
- 158 Section 119.0712(2)(a), F.S.
- 159 AGO 10-10.
- 160 *Times Publishing Company v. City of Kenneth City*, No. 10-17863-CI-13 (Fla. 6th Cir. Ct. January 26, 2011). *And see* Inf. Op. to Rubin, May 12, 2010, advising that the statute does not act as a bar against the town producing copies of notices of infraction for speed zone violations issued pursuant to the town's street safety program. *See also City of Tallahassee v. Federated Publications, Inc.*, No. 4:11 cv 395-RH/CAS (N. D. Fla. August 9, 2012).
- 161 Section 539.003, F.S.
- 162 *Id.* *And see* AGO 01-51.
- 163 *See Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).
- 164 AGO 94-75.

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- 165 AGO 94-54. *Accord* AGO 11-19.
- 166 AGO 92-80. *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980).
- 167 *See Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985).
- 168 *See, e.g., News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980).
- 169 *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). *Cf. Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001).
- 170 *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.).
- 171 AGO 77-48.
- 172 *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981).
- 173 AGO 94-54.
- 174 Section 112.21(1), F.S.
- 175 *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), and AGO 77-48.
- 176 *Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985).
- 177 Similarly, s. 112.532(4)(b), F.S., provides for confidentiality during an ongoing disciplinary investigation “[n]otwithstanding s. 112.533(2),” when a law enforcement officer or correctional officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or
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dismissal until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action. *Compare* s. 119.071(2)(g)1., F.S. (complaints and other records which relate to a complaint of discrimination in connection with employment are exempt from s. 119.07(1), F.S., until a finding is made relating to probable cause, the investigation becomes inactive, or the complaint or other record is made a part of the official record of any hearing or court proceeding); and s. 119.071(2)(g)2., F.S. (where an 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 and exempt). *Cf.* AGO 09-10.

178 Section 112.531(1), F.S.

179 AGO 93-61. A court has held that the complaint must be in writing in order for the confidentiality provisions in s. 112.533, F.S. to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991). However, in a later case – *Fraternal Order of Police v. Rutherford*, 51 So. 3d 485, 488 (Fla. 1st DCA 2010) – the court held that a written complaint is 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.”

180 AGO 96-27.

181 *Morris Publishing Group, LLC v. Thomason*, No. 16-2005-CA-7052-XXXX-MA (Fla. 4th Cir. Ct. October 14, 2004). *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).

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- 182 AGO 91-73.
- 183 *Id.* See s. 112.533(2)(b), F.S.
- 184 AGO 95-59. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).
- 185 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).
- 186 Section 112.533(2)(b), F.S. See *City of Delray Beach v. Barfield*, 579 So. 2d at 318.
- 187 *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). And see AGO 91-73.
- 188 *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).
- 189 *Palm Beach County Police Benevolent Association v. Neumann*, *supra*. And see s. 119.071(2)(h)1.c., F.S.
- 190 AGO 00-66.
- 191 AGO 90-05.
- 192 Section 112.533(4), F.S.
- 193 *Id.*
- 194 See, e.g., AGO 03-60. *Cf.* AGO 97-62 (confidentiality)
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- 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).
- 195 *See Cooper v. Dillon*, 403 F.3d 1208, 1218-1219 (11th Cir. 2005).
- 196 Section 112.215(7), F.S.
- 197 Section 17.076(5), F.S.
- 198 Section 112.0455(11), F.S. *See also* s. 112.0455(8)(l) and (t), F.S.
- 299 *See* AGO 98-38.
- 200 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.).
- 201 *See* ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.
- 202 *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977).
- 203 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"). *See also Rush v. High Springs, Florida*, 82 So. 3d 1108 (Fla. 1st DCA 2012), (city allowed to redact questions and answers from a pre-employment polygraph report).

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- 204 See *Dickerson v. Hayes*, *supra* at 837.
- 205 Section 119.071(1)(a), F.S. . See AGO 76-210.
- 206 AGO 81-12.
- 207 Section 119.071(4)(d)2d., F.S. *And see* s. 119.071(5)(i), F.S. (exemption for current or former federal prosecutors, subject to specified conditions).
- 208 AGO 10-37. *And see* AGOs 90-50 and 96-57.
- 209 AGO 10-37.
- 210 AGO 90-50. *See also* AGO 08-24.
- 211 AGO 07-21.
- 212 *Id.*
- 213 AGO 90-50.
- 214 Inf. Op. to Reese, April 25, 1989. *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”).
- 215 Section 119.071(4)(d)3., F.S.
- 216 AGO 10-37.
- 217 *Id.*
- 218 Inf. Op. to Laquidara, July 17, 2003.
- 219 See HB629, filed November 10, 2011.
- 220 AGO 10-37.

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- 221 Inf. Op. to Amunds, June 8, 2012
- 222 *Id.* See also AGOs 90-50 and 07-21. Cf. AGO 94-90 (statute did not preclude release of booking photography of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071[2][c], F.S.
- 223 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.*
- 224 Section 760.50(5), F.S. And see s. 119.071(4)(b)2., F.S. (Personal identifying information of a dependent child of a current or former officer or employee whose dependent child is insured by the agency's group insurance plan is exempt).
- 225 Sections 110.123(9) (state employees) and 112.08(7) (county or municipal employees). See AGOs 91-88, 94-78 and 94-51.
- 226 However, public school system employee payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. See AGO 09-11.
- 227 Section 121.031(5), F.S. "A 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.*
- 228 *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County*, No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007).
- 229 *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). Accord AGO 73-30.
- 230 See *Shevin v. Byron, Harless, Schaffer, Reid and Associates*,
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379 So. 2d 633 (Fla. 1980).

- 231 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 that contained some information that could lead to the identity of an undercover person, 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 turned over to the newspaper. *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997).
- 232 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).
- 233 See *Rush v. High Springs, Florida*, 82 So. 3d 1108 (Fla. 1st DCA 2012)
- 234 See *Dickerson v. Hayes*, *supra* at 837.
- 235 See *Bryan v. State*, 753 So. 2d 1244 (Fla. 2000), in which the Florida Supreme Court upheld the constitutionality of s. 945.10, F.S. See also *Roberts v. Singletary*, No. 96-603 (Fla. 2d Cir. Ct. July 28, 1997) (portions of the Department of Corrections Execution Procedures Manual containing "highly sensitive security information" not subject to disclosure).
- 236 *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). 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).

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- 237 Section 119.071(3)(a), F.S. See also s. 281.301, F.S.
- 238 *Id.*
- 239 *Id.*
- 240 *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* AGO 04-28. See also *Times Publishing Company v. City of Pensacola*, No. 2002-2053 (Fla. 1st Cir. Ct. November 13, 2002), *per curiam affirmed*, 869 So. 2d 547 (Fla. 1st DCA 2004) (police department records of “specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel” were exempt from disclosure under s. 119.071[3] [a], F.S.).
- 241 *Marino v. University of Florida*, 107 So. 3d 1231 (Fla. 1st DCA 2013)
- 242 Section 119.071(5)(a)6.b., F.S.
- 243 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); and *State v. Bee Line Entertainment Partners Ltd.*, No. CIO 00-5358, 28 Med.L.Rptr. 2592 (Fla. 9th Cir. Ct. October 25, 2000) (videotapes created with hidden camera by law enforcement investigation showing result of investigative activity but that do not reveal confidential surveillance methods must be released once investigation is no longer active).
- 244 See *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. *And see Bill of Rights, Inc. v. City of New Smyrna Beach*, No.
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2009-20218- CINS (Fla. 7th Cir. Ct. April 8, 2010), in which the court stated 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."

*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).

245 *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). *See also Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

246 AGO 75-50.

247 Inf. Op. to Cook, May 27, 2011.

248 AGO 05-12.

249 Inf. Op. to Cook, May 27, 2011.

250 *Tribune Company v. Cannella*, *supra* at 1077.

251 *Douglas v. Michel*, 410 So. 2d 936, 938 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985).

252 AGO 75-175.

253 *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991).

254 *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002).

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*See also Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886n.3 (Fla. 3d DCA 2005).

255 Inf. Op. to Cook, May 27, 2011.

256 *See* ss. 817.568 and 817.569, F.S.

257 *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005).

258 The custodian or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting records. Section 119.07(1)(b), F.S.

259 *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996). [Emphasis supplied by the court].

260 *Mintus v. City of West Palm Beach*, 711 So. 2d 1359, 1361 (Fla. 4th DCA 1998).

261 *Id.*

262 Section 119.07(1)(c), F.S.

263 *Id.*

264 Section 119.01(1), F.S.

265 *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991).

266 *See Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (public records cannot be hidden from the public by transferring physical custody of the records to the agency's attorneys); AGO 92-78 (public housing authority not authorized to withhold its records from disclosure on the grounds that the records have been subpoenaed by the state attorney and transferred to that office); and *Chandler v. City*

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of *Sanford*, 38 FL.W. D1945 (Fla. 5th DCA 2013).

- 267 No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994).
- 268 See also *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (records on private entity's secure website that were viewed and used by a state university in carrying out its official duties were public records even though the university did not take physical possession).
- 269 AGO 86-69.
- 270 *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976).
- 271 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985).
- 272 See AGO 92-38.
- 273 *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991).
- 274 See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing").
- 275 See *Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *per curiam affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988).
- 276 AGOs 92-38 and 91-76. See also *Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987).
- 277 Inf. Op. to Cook, May 27, 2011.
- 278 Section 119.07(1)(a) and (4), F.S.



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- 279 AGO 80-57.
- 280 AGO 92-38.
- 281 *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991).  
*See also* AGO 08-29 (agency not required to create list in response to request for information).
- 282 *Wootton v. Cook, supra. See also Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records. *Cf. Gilliam v. State*, 996 So. 2d 956 (Fla. 2d DCA 2008) (clerk, as custodian of judicial records, had a legal duty to respond to Gilliam's request for information regarding costs).
- 283 Section 119.01(2)(f), F.S.
- 284 AGO 91-61. *See also Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request).
- 285 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).
- 286 AGO 08-29.
- 287 AGO 97-39.
- 288 *Seigle v. Barry*, 422 So. 2d at 66-67.
- 289 Section 119.01(2)(f), F.S.
- 290 *And see* s. 119.01(2)(e), F.S.
- 291 Section 119.07(2)(c), F.S.
- 292 Section 119.07(1)(c), F.S.
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- 293 *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985).
- 294 *Id* at 1078-1079.
- 295 *Tribune Company v. Cannella*, 458 So. 2d at 1078.
- 296 AGO 96-55.
- 297 *See Rechler v. Town of Manalapan*, No. CL 94-2724 AD (Fla. 15th Cir. Ct. November 21, 1994), *affirmed*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied*, 684 So. 2d 1353 (Fla. 1996), finding that the town engaged in a “pattern of delays” by taking months to fully comply with the petitioner’s public records requests.
- 298 *Johnson v. Jarvis*, 74 So. 3d 168 (Fla. 1st DCA 2011). *See also Hewlings v. Orange County*, 87 So. 3d 839 (Fla. 5th DCA 2012)
- 299 AGO 81-12.
- 300 Inf. Op. to Riotte, May 21, 1990.
- 301 *Id*.
- 302 *See* Inf. Op. to Worch, June 15, 1995.
- 303 *The Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act).
- 304 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010).
- 305 *See also City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (“there is absolutely no doubt that promises of

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- confidentiality [given to employees who were asked to respond to a survey] do not empower the Court to depart from the public records law”). Cf. *WPTV-TV v. State*, 61 So. 3d 1191 (Fla. 5th DCA 2011) (trial court may not require media to enter into confidentiality agreement in order to receive advance notice of information relating to jury selection in criminal case).
- 306 See *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 filled out forms requesting that city maintain the confidentiality of all material in their personnel files).
- 307 See *Seapro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003), review denied sub nom., *Crist v. Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005) (private party cannot render public records exempt from disclosure merely by designating as confidential the material it furnishes to a state agency). And see *Hill v. Prudential Insurance Company of America*, 701 So. 2d 1218 (Fla. 1st DCA 1997), review denied, 717 So. 2d 536 (Fla. 1998).
- 308 Section 119.07(1)(f), F.S. See *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000).
- 309 719 So. 2d 19, 21 (Fla. 2d DCA 1998).
- 310 AGO 06-04.
- 311 See *Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact confidential identifying information from police report but must produce the rest for inspection). See also AGO 99-52 (the fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act).
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- 312 *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991). *But see Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992) (public's right of access to pretrial criminal discovery materials must be balanced against a nonparty's constitutional right to privacy).
- 313 AGO 85-03.
- 314 *See State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905). *See also* AGOs 84-03 and 76-34 (only those fees or charges which are authorized by statute may be imposed upon an individual seeking access to public records).
- 315 *See Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).
- 316 AGO 00-11.
- 317 *Id.*
- 318 *Id.*
- 319 Section 119.07(4)(a)2., F.S.
- 320 Section 119.07(4)(c), F.S.
- 321 Section 119.07(4)(a)3., F.S.
- 322 Section 119.011(1), F.S.
- 323 Section 119.07(4)(b), F.S.
- 324 *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).
- 325 *See* AGOs 92-38 and 90-07.
- 326 *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA 1991), *review denied*, 592 So. 2d 680 (Fla. 1991). And
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*see Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008), approving a county's similar formula for calculating its special service charge. However, these cases do not *require* an agency to assess the special service charge after 15 minutes of labor. For example, the Attorney General's Office has chosen to not assess the special service charge until the time involved to produce requested public records exceeds 2 hours.

327 *Carden v. Chief of Police*, 696 So. 2d 772, 773 (Fla. 2d DCA 1996).

328 *Id.*

329 Section 119.011(9), F.S.

330 AGO 88-23.

331 AGO 99-41.

332 AGO 84-81.

333 *See Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d at 269. *And see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), noting that "it would not be unreasonable in these types of cases [involving many documents and several different exemptions] to charge a reasonable special fee for the supervisory personnel necessary to properly review the materials for possible application of exemptions."

334 976 So. 2d 31 (Fla. 2d DCA 2008).

335 However, an agency is not *required* to add employee benefits to the charge; for example, as a matter of policy, the Attorney General's Office does not include employee benefits in the calculation of the special service charge.

336 *State v. Gudinas*, No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999).

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337 *Id.*

338 *See Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991), stating that if a requestor “identifies a record with sufficient specificity to permit [the agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record.” (e.s.)

339 No. 94-10557-CA-D (Fla. Cir. Ct. Brevard Co. December 15, 1995), *per curiam affirmed*, 687 So. 2d 252 (Fla. 5th DCA 1997).

340 *See* s. 119.07(4)(d), F.S.

341 995 So. 2d 1027 (Fla. 4th DCA 2008).

342 *Wootton v. Cook*, *supra*. *See also Woodard v. State*, 885 So. 2d 444 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total cost to copy the requested records.

343 *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998).

344 *Id.*

345 *See Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are “in the same position as anyone else seeking public records who cannot pay” the required costs). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382n.7 (Fla. 1st DCA 1994) (indigent person “is not relieved by his indigency” from paying statutory costs to obtain public records); and *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006). (labor union must pay charges stipulated in Ch. 119, F.S.).

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- 346 AGO 90-81.
- 347 AGO 85-03. *See also* AGO 89-93 (city not authorized to sell copies of its growth management book for \$35.00 each when the actual cost to reproduce the book is \$15.10 per copy; city is limited to charging only the costs authorized by Ch. 119, F.S.).
- 348 AGO 99-41.
- 349 AGO 90-07.
- 350 Inf. Op. to Sugarman, September 5, 1997. *Cf. Cone & Graham, Inc. v. State*, No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997) (an agency's decision to "archive" older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was analogous to an agency's decision to store records off-premises in that the agency rather than the requestor must bear the costs for retrieving the records).
- 351 AGO 88-23.
- 352 AGO 99-41.
- 353 *Id.*
- 354 AGO 02-37.
- 355 *Id. Accord* AGO 13-03.
- 356 AGO 86-83.
- 357 For example, AGO 03-57 advised that persons who are authorized by statute to obtain otherwise confidential autopsy photographs should be provided copies in accordance with the provisions of the Public Records Act, i.e., s. 119.07(4), F.S. The medical examiner is not authorized to charge a fee that exceeds those charges. *Id.*
- 358 Section 321.23(2)(a), F.S., provides that the fee to obtain
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a copy of a crash report from the department is \$10.00 per copy. A copy of a homicide report is \$25 per copy. Section 321.23(2)(b), F.S. Separate charges are provided for photographs. Section 321.23(2)(c), F.S.

- 359 *Villarreal v. State*, 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply).
- 360 *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992). *And see Weeks v. Golden*, 846 So. 2d 1247 (Fla. 1st DCA 2003) (prevailing pro se inmate entitled to recover costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred in public records lawsuit); *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899 (Fla. 4th DCA 2012).
- 361 *Office of the State Attorney v. Gonzalez*, 953 So. 2d 759.764 (Fla. 2nd DCA 2007). Thus, attorney's fees are recoverable even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure. *WFTV, Inc. v. Robbins*, 625 So. 2d 941 (Fla. 4th DCA 1993); *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990); *News and Sun-Sentinel Company v. Palm Beach County*, 517 So. 2d 743 (Fla. 4th DCA 1987). *And see Lee v. Board of Trustees, Jacksonville Police & Fire Pension Fund*, 113 So. 3d 1010 (Fla. 1st DCA 2013).
- 362 Cf. s. 838.022(1)(b), F.S. (unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act).
- 363 Section 119.021(1)(a), F.S.
- 364 Section 119.021(1)(b), F.S.



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- 365 Section 119.021(1)(c), F.S.
- 366 AGO 93-16.
- 367 *Id.* And see AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices); and AGO 07-14 (“Although the Public Records Law does not prescribe a location at which public records must be maintained, it does suggest that such records be kept where they are ordinarily used”).
- 368 See *Maxwell v. Pine Gas Corporation*, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer); and AGO 98-59 (records in the files of the former city attorney 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).
- 369 Section 119.021(2)(b), F.S. See generally Chs. 1B-24 and 1B-26, Florida Administrative Code.
- 370 AGO 94-75. See also AGOs 09-19 (city must follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 96-34 (e-mail messages are subject to statutory limitations on destruction of public records).
- 371 AGO 93-86. See s. 119.021, F.S.
- 372 Section 119.07(1)(h), FS
- 373 AGO 04-51. *Accord* Inf. Op. to Blair, August 24, 2011 (evidence that constitutes a public record may be destroyed only in accordance with retention schedules established by the division and noting that the division has adopted

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a General Records Schedule GS2 for law enforcement agencies).

374 Inf. Op. to Blair, August 24, 2011.

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## APPENDIX

This appendix does not contain the complete text of Chapter 119, Florida Statutes, but rather selected portions that are referenced within this Guide. Please refer to the Florida Statutes for the complete text of Chapter 119, Florida Statutes. A more complete listing of exemptions is also contained in the Government in the Sunshine Manual.

### **119.01 General state policy on public records.—**

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency 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.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) 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 the agency, including public records that are on line or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means,

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such access should be provided in the most cost- effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

**119.011 Definitions.—As used in this chapter, the term:**

(1) “Actual cost of duplication” means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

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(3)(a) “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) “Criminal investigative information” means information with respect 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.

(c) “Criminal intelligence information” and “criminal investigative information” shall not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
  - a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
  - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Information and indictments except as provided in s. 905.26. (d) The word “active” shall have the following meaning:
  1. Criminal intelligence information shall be 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.
  2. Criminal investigative information shall be considered

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“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.

In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) “Criminal justice agency” means:

(a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties;

(c) 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; or

(d) The Department of Corrections.

(5) “Custodian of public records” means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

(6) “Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(7) “Duplicated copies” means new copies produced by duplicating, as defined in s. 283.30.

(8) “Exemption” means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.

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(9) "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.

(10) "Paratransit" has the same meaning as provided in s. 427.011.

(11) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(12) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(13) "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) "Sensitive," for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

(a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);

(b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

(c) Control and direct access authorizations and security measures for automated systems.

**119.021 Custodial requirements; maintenance, preservation, and retention of public records.—**

(1) Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for

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convenient use.

(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.

(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records



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of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency orders that comprise final agency action and that must be indexed or listed pursuant to s. 120.53 have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.

(4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

**119.07 Inspection and copying of records; photographing public records; fees; exemptions.—**

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

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(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public

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records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are

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kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring

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to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section 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. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

**119.071 General exemptions from inspection or copying of public records.—**

(1) AGENCY ADMINISTRATION.—

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination has the right to review his or her own completed examination.

(b)1. For purposes of this paragraph, “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.

2. Sealed bids, proposals, or replies received by an

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agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art I of the State Constitution 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.

3. 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 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution 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.

(d)1. 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 s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. 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.

2. This 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. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative

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proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency.

(2) AGENCY INVESTIGATIONS.—

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c)1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. 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 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal

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investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any 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(3), are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Department of Community Affairs as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g)1.a. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to 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 other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State



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Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

b. This provision shall not affect any function or activity of the Florida Commission on Human Relations.

c. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. When the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by chapter 827.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be

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limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(j)1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from s. 119.07(1) 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 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, 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. Any 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.

2.a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that 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

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assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(k)1. 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 of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a) of the State Constitution 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.

(3) SECURITY.—

(a)1. As used in this paragraph, the term "security system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical

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security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

3. Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:

a. The property owner or leaseholder; or

b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

(b)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, 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 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, 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 before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

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a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph 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.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

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(B) Provides more than 10,000 permanent seats for spectators. (II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or

(II) Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common ownership, development plan, or

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management that encompasses 300,000 or more square feet of gross floor area.

f. “Hotel or motel development” means any hotel or motel development that accommodates 350 or more units.

(4) AGENCY PERSONNEL INFORMATION.—

(a) The social security numbers of all current and former agency employees which numbers are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

(b)1. 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) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person’s legal representative provides written permission or pursuant to court order.

2.a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, “dependent child” has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to personal identifying information held by an agency before, on, or after the effective date of this exemption.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)1. For purposes of this paragraph, the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2. a.(I) The home addresses, telephone numbers, social

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security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security 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 are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a) of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the 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 current or former justices and judges are exempt from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide



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prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

II. The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a) of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools, and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource,

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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; the 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 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the 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 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820, and the 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 persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors I and II, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services

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counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s.24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public.

l. The home addresses, and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I. of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public.

3. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of

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the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

(5) OTHER PERSONAL INFORMATION.— (a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may

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not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall, provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:

a. The disclosure of the social security number is expressly required by federal or state law or a court order. b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial

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entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7.a. For purposes of this subsection, the term:

(I) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq., or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity 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. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for

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which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.

(c)1. For purposes of this paragraph, the term:

a. "Child" means any person younger than 18 years of age.

b. "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.

2. Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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4. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g) Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term “biometric identification information” means:

1. Any record of friction ridge detail;
2. Fingerprints;
3. Palm prints; and
4. Footprints.

(i)1. For purposes of this paragraph, “identification and location information” means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

(j)1. Any information furnished by a person to any



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agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

**119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—**

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) For purposes of this subsection, the term “motor vehicle record” means 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.

(b) 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. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c)1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

(d) The department may adopt rules to carry out the purposes of this subsection and the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Rules adopted by the department may provide for the payment of applicable fees and, prior to the disclosure of personal information pursuant

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to this subsection or the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., may require the meeting of conditions by the requesting person for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires.

**119.10 Violation of chapter; penalties.—**

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates: (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**119.105 Protection of victims of crimes or accidents.—**

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit

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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.

**119.11 Accelerated hearing; immediate compliance.—**

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

**119.12 Attorney's fees.—**

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

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