

Public records, meaning of "law enforcement personnel";

Number: INFORMAL

Date: January 31, 2003

Subject:

Public records, meaning of "law enforcement personnel";

The Honorable Mary W. Morgan
Supervisor of Elections
Collier Government Complex
3301 Tamiami Trail East
Naples, Florida 33962

Dear Ms. Morgan:

You ask what public officers or employees are included within the class "law enforcement personnel" for purposes of s. 119.07(3)(k), F.S.?

Informally and in an effort to be of assistance, it is recommended that, in the absence of any statutory or other commonly accepted definition of the term "law enforcement personnel" and until this matter is legislatively clarified, the term be interpreted to encompass those individuals designated law enforcement officers in s. 784.07, F.S., which serves a similar purpose, the protection of such individuals. However, in light of the significant problems that exist regarding the interpretation of this statute, legislative clarification is needed to definitively resolve this issue.

Chapter 119, F.S., the Public Records Law, ensures the public's right of access to the records of its governmental agencies.[1] Only those public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the disclosure provisions of Ch. 119, F.S.[2]

In the absence of an express legislative exemption, law enforcement personnel records are open to public inspection like those of any other public employee.[3] Section 119.07(3)(k), F.S., however, provides in pertinent part:

"The home addresses, telephone numbers, and photographs of active or former *law enforcement personnel* and personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; the home addresses, telephone number, photographs, 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 the provisions of [s. 119.07(1), F.S.]. . . ."

The difficulty in construing s. 119.07(3)(k), F.S., arises from the lack of specific definitions of some of its terms. Although the statute contains a limited exemption for "law enforcement

personnel," it does not define that term, nor am I aware of any statutory or other precise, generally accepted definition of the term "law enforcement personnel." In AGO 82-40, however, this office concluded that correctional officers are included within the term "law enforcement personnel." Such a conclusion was based upon an examination of the various statutes defining "law enforcement officers" as well as a recognition of the responsibility of correctional officers to keep the public peace and their power to make arrests.[4]

Section 119.07(3)(k), F.S., uses the term "law enforcement personnel" rather than "law enforcement officers." Even the term "law enforcement officer," however, has not been uniformly defined by the Florida Legislature. The term has been defined differently for various purposes such as the payment of such officer's defense costs in criminal and civil cases,[5] death benefits,[6] so-called bill of rights,[7] assault and battery on such officers,[8] carrying concealed weapons,[9] and certification.[10]

A statute must be construed in such a manner as to ascertain and give effect to the legislative purpose.[11] As with any exemption from Ch. 119, F.S., however, the exemption in s. 119.07(3)(k), F.S., should be narrowly construed.[12] An examination of the legislative history surrounding the enactment of s. 119.07(3)(k), F.S., by Ch. 79-187, Laws of Florida, indicates that the intent of the Legislature was to codify the so-called "police secrets" rule.[13] The Legislative history reveals little discussion regarding the purpose of this exemption other than the necessity of removing the information from public access. Subsequent amendments to the statute, however, make it clear that the purpose of the exemption is to protect the safety of the law enforcement personnel and their families.[14]

In the absence of legislative clarification, this office can only look to analogous statutes which serve a similar purpose—the protection of law enforcement personnel. Section 784.07, F.S., seeks to protect the safety of law enforcement personnel by increasing the penalties for assault and battery against such individuals. "Law enforcement officer" is defined for purposes of this statute to include:

"[A] law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Game and Fresh Water Fish Commission and the Departments of Natural Resources and Law Enforcement." [15]

Inasmuch as both s. 119.07(3)(k), F.S., and s. 784.07, F.S., seek to serve a similar purpose of function—the protection of law enforcement personnel and in the absence of any statutory or other commonly accepted definition of the term "law enforcement personnel," I would recommend that until this matter is clarified by the Legislature, agencies faced with implementing the provisions of s. 119.07(3)(k), F.S., consider utilizing the definition contained in s. 784.07(1)(a), F.S. Such a recommendation is made in an effort to provide some assistance or guidance to agencies faced with the difficulty of implementing terms within the exemption which are capable of being defined with any real certainty or specificity.

Legislative clarification of this matter is needed in light of the ambiguity and confusion that exists regarding the interpretation of s. 119.07(3)(k), F.S. I would, therefore, urge the Legislature to review the statute in order to clarify its intent regarding the scope of this exemption.[16] I hope, however, that the above informal advisory comments may be of assistance to you in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/twd

[1] See s. 119.07(1)(a), F.S., which requires the custodian of public records to "permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee."

[2] Section 119.07(3)(a), F.S.

[3] See *Tribune Company v. Cannella*, 438 So.2d 516 (2 D.C.A. Fla., 1983), *quashed on other grounds*, 458 So.2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency do not constitute "criminal intelligence information" for purposes of the exemption from disclosure).

[4] See AGO 76-5 concluding that the supervision of prisoners and their activities during the terms of their confinement can be classified as a police function in that it keeps the public peace.

[5] Section 111.065, F.S. (a full-time employee of the state or political subdivision or any deputy sheriff whose primary responsibility is the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of this state).

[6] Section 112.19(1)(b), F.S. (full-time officer or employee of state or political subdivision, including correctional officers, correctional probation officers, state attorney investigators, or public defender investigators whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing or convicted of a crime; also includes members of bomb disposal units).

[7] Section 112.531(1), F.S. (a full-time employee, other than chief of police, of the state or political subdivision whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic or highway laws).

[8] Section 784.07(1)(a), F.S. (for purposes of assault or battery on law enforcement officer statute, term refers to full-time or part-time law enforcement or correctional officer, correctional

probation officer, auxiliary law enforcement or correctional officer, county probation officer, Department of Corrections employee or agent who supervises or provides services to inmates; Parole Commission officer; law enforcement personnel of the Game and Fresh Water Fish Commission and Departments of Natural Resources and Law Enforcement).

[9] Section 790.001(8), F.S. (for purposes of firearms restrictions, term refers to United States, state or political subdivision officer or employee possessing the authority to make arrests or to carry a concealed weapon; military personnel on duty or preparing for duty; employees of the state prisons or correctional systems designated by the Department of Corrections or by a superintendent of an institution; peace officers; and all state attorneys and United States attorneys and their assistants and investigators).

[10] Section 943.10(1), F.S. (any person who is elected, appointed, or employed full time by the state or political subdivision who is vested with the authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state; includes all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management responsibilities of full-time or part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. See also s. 943.10(6) and (8), F.S., respectively defining "[p]art-time law enforcement officer," and "[a]uxiliary law enforcement officer."

[11] See, e.g., *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So.2d 1130 (Fla. 1990) (legislative intent is the polestar by which court must be guided in interpreting statutory provisions).

[12] See *Seminole County v. Wood*, 512 So.2d 1000 (5 D.C.A. Fla., 1987), *pet. for rev. denied*, 520 So.2d 586 (Fla. 1988).

[13] See Audio tape of hearing of the Senate Committee on Governmental Operations, April 23, 1979, tape 1 of 2. And see *Lee v. Beach Publishing Company*, 173 So. 440 (Fla. 1937), and *Glow v. State*, 319 So.2d 47 (2 D.C.A. Fla., 1975), discussing the "police secrets rule."

[14] For example, in 1989, the Florida Legislature amended the statute to include certain Department of Health and Rehabilitative Services employees and their families. See Ch. 89-80, Laws of Florida. The legislative history indicates the need to include such employees because "their duties are sometimes very hazardous and similar to those of law enforcement personnel." Senate Staff Analysis and Economic Impact Statement on SB 665 (codified as Ch. 89-80, Laws of Florida), April 18, 1989. Cf. s. 119.14(4)(b)2., F.S., of the Open Government Sunset Review Act, which provides for the retention of an exemption of Ch. 119, F.S., which "[p]rotects information of a sensitive personal nature concerning individuals, the release of which . . . would jeopardize the safety of such individuals."

[15] It might be argued that s. 790.001(8), F.S., which contains a broader definition of "law enforcement officer" for purposes of Ch. 790, F.S., relating to weapons and firearms should be used. The definition, however, expressly includes "peace officers" within the definition of "law enforcement officer." As conservators of the peace, judges are peace officers and, therefore,

constitutes law enforcement officers for purposes of s. 790.001(8), F.S., and presumably, would qualify for the exemption contained in s. 119.07(3)(k), F.S. See s. 19, Art. V, State Const., stating that judicial officers shall be conservators of the peace; and AGO 77-79 stating that judicial officers are peace officers. Yet in 1991 the Legislature amended s. 119.07(3)(k), F.S., to expressly include judges. See s. 1, Ch. 91-149, Laws of Florida.

[16] During the 1992 legislative session, a bill was introduced which would have clarified some of the ambiguities existing in s. 119.07(3)(k), F.S. Committee Substitute for HB 973 would have exempted certain information relating to active or former law enforcement officers as defined in s. 943.10(1), F.S., and other active or former officers as defined in s. 943.10(14), F.S. The bill passed the Florida House of Representatives but died in the Senate Governmental Operations Committee.