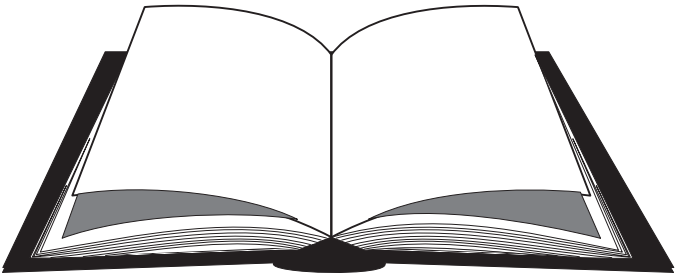
Public Records



A Guide For
Law Enforcement Agencies

The Office of
Attorney General Bill McCollum

2008 Edition

A MESSAGE FROM ATTORNEY GENERAL BILL McCOLLUM

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 2008 edition of the Guide. This publication incorporates legislative changes through the 2007 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.

In addition, 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.

It is the policy of this office to provide expedited assistance to law enforcement agencies faced with questions about public records. Accordingly, if we may provide additional information, please do not hesitate to contact us at (850) 245-0140.

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

A. What materials are public records?

Section 119.011(11), 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.[1] All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.[2] Selected portions of Ch. 119, F.S., the Public Records Act, 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.

The broad definition of the term "public record" can be seen in numerous Attorney General Opinions and court decisions. The following are examples of materials which have been found to constitute public records:

> Anonymous letters sent to village officials containing allegations of misconduct by village employees[3]

Tape recording of staff meetings[4]

Travel itineraries and plane reservations for use of state aircraft[5]

Videotaped training film[6]

B. When are drafts of agency proposals subject to Ch. 119, F.S.?

There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency.[7]

Accordingly, any agency document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary," "working draft" or similar label. Examples of such materials would include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

It follows then that such records are subject to disclosure unless the Legislature has specifically exempted the documents from inspection or has otherwise expressly acted to make the records confidential.[8]

II. 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.

In addition, Art. I, s. 24(a), Fla. Const., establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state (which is defined to include counties, municipalities and districts), or persons acting on their behalf, except those records exempted by law pursuant to Art. I, s. 24, Fla. Const., or specifically made confidential by the Constitution.

The term "agency" as used in Ch. 119, F.S., is not limited to governmental entities. A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act.[9] 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.[10]

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.[11]

Similarly, a private company under contract with a sheriff to provide medical services for inmates at the county jail must release its records relating to a settlement agreement with an inmate. Since these records would normally be subject to the Public Records Act if in the possession of the public agency, they are likewise covered by that law even though in the possession of the private corporation.[12]

A city may not allow a private entity to maintain physical custody of public records (polygraph chart used in police internal affairs investigation) "to circumvent the public records chapter."[13]

III. WHAT KINDS OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT?

A. Computer records

In 1982, the Fourth District Court of Appeal stated that 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 . . . ."[14]

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.[15]

Moreover, the definition of "public records" specifically includes "data processing software" and establishes that a record made or received in connection with official business is a public record, regardless of physical form, characteristics, "or means of transmission."[16]

Accordingly, computerized 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.

1. "E-Mail"

"E-mail" messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of an exemption.[17] Such messages are subject to the statutory restrictions on destruction of public records.[18]

However, private e-mail stored in government computers does not automatically become a public record by virtue of that storage.[19]

Section 668.6076, F.S., enacted by the 2006 Legislature, requires that any agency as defined in s. 119.011(1), F.S., or legislative entity that operates a website and uses electronic mail must post the following statement in a conspicuous location on its 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.

2. Formatting issues

Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to Ch. 119, F.S., a copy of any public record in that system which is not exempted by law from public disclosure.[20] An agency that maintains a public record in an electronic recordkeeping system must provide a copy of the record in the medium requested by the person making a Ch. 119 demand, if the agency maintains the record in that medium and the agency may charge a fee in accordance with Ch. 119, F.S.[21] 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 the Public Records Act.[22]

However, an agency is not generally required to reformat its records to meet a requestor's particular needs. As one court has stated, 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."[23] 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.[24]

Despite the general rule, however, an agency may be required to provide access 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 proffered does not fairly and meaningfully represent the records; or

4) the court determines other exceptional circumstances exist warranting this special remedy.[25]

If an agency chooses to provide a public record in a medium that is not routinely used by the agency, or if it chooses to compile information that is not routinely developed or maintained by the agency, or that requires a substantial amount of manipulation or programming, the fee to be charged must be in accordance with s. 119.07(4), F.S. (authorizing the imposition of a special service charge if extensive information technology resources or labor are required).[26]

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.[27] An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency.[28]

3. Remote access

Section 119.07(2)(a), F.S., authorizes agencies to provide access to public records by remote electronic means provided exempt or

confidential information is not disclosed.[29]

Thus, an agency is authorized but not required to provide remote electronic access to public records. 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.[30]

4. Security exemptions

Risk analysis information relative to security threats to data and information technology resources of an agency is confidential and exempt.[31] The internal policies and procedures to assure the security of the data and information technology resources which, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential and exempt.[32] Results of periodic internal audits and evaluations of the security programs for an agency's data and information technology resources are confidential and exempt.[33] The information made confidential by the above statutes, however, is available to the Auditor General and the Agency for Enterprise Information Technology for carrying out their postauditing duties.[34]

Those portions of agency-produced data processing software which are used to "control and direct access authorizations and security measures for automated systems" constitute "sensitive" data processing software which is exempt from public inspection.[35]

5. Copyrighted software

Section 119.084(2), F.S., authorizes agencies to hold and enforce copyrights for data processing software created by the agency. The agency may sell or license the copyrighted software and may establish a license fee for its use. The prices or fees for the sale or licensing of the copyrighted software may be based on market

considerations.

However, the price or fee for providing agency-created and copyrighted data processing software to an individual solely for application to data or information maintained or generated by the agency that created the software must be limited to the fees prescribed in s. 119.07(4), F.S. Thus, while s. 119.084, F.S., allows public agencies to copyright software which they have created and to charge a fee based on market considerations, if the public must use the software in order to access agency public records, the agency must charge the fee provided in s. 119.07(4), F.S., and not the market-based fee.

6. Trade secret exemptions

The Legislature has created an exemption for data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret as defined in s. 812.081, F.S.[36] In order for the exemption to apply, two conditions must be present: The licensing agreement must prohibit disclosure of the software, and the software must meet the statutory definition of "trade secret" found in s. 812.081, F.S.[37]

Section 815.04(3)(a), F.S., provides that data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., which resides or exists internal or external to a computer, computer system, or computer network is confidential and exempt from s. 119.07(1), F.S.[38]

B. Financial records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists.[39]

1. Bids

Section 119.071(1)(b)1.a., F.S., provides an exemption for "sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals" until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a), F.S., or within 10 days after the bid or proposal opening, whichever is earlier.[40]

2. Budgets

Budgets and working papers used to prepare them are normally subject to inspection.[41]

3. Personal financial records

In the absence of statutory exemption, financial information prepared or received by an agency is usually subject to Ch. 119, F.S.[42] For example, county records of payments made by individuals for waste collection services are public records.[43]

There are specific exemptions, however, that are applicable to certain financial records. For example, bank account numbers and debit, charge and credit card numbers are exempt from public disclosure.[44]

4. Telephone bills

Records of telephone calls made from agency telephones are subject to disclosure in the absence of an exemption.[45] Thus, the Attorney General's Office has advised that telephone numbers in a school district's records of calls made on agency telephones are public records even when those calls may be personal and the employee pays or reimburses the school district for the calls.[46]

C. Litigation records

Note: The purpose of this section is to provide general background information on the question of disclosure of attorney-client communications and attorney work product. The discussion is not intended to serve as a guide to resolve 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.

1. 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.[47]

2. Attorney work product

With the enactment of s. 119.071(1)(d), F.S., the Legislature has created a narrow 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 adversarial administrative proceedings, or in anticipation of imminent litigation or proceedings, are exempt from disclosure under s. 119.07(1), F.S., until the conclusion of the litigation or proceedings. An agency asserting the work product exemption must identify the potential parties to the litigation or proceedings.[48]

a. Attorney bills and payments

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, the Attorney General's Office concluded that a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption.[49]

If the bills and invoices contain some information exempted by s. 119.071(1)(d), F.S., -- *i.e.,* "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies]," -- the exempt material may be deleted and the remainder disclosed.[50] However, information such as the hours worked or the hourly wage clearly

would not fall within the scope of the exemption.[51]

b. Investigations

Section 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product.[52] The exemption is narrower than the work product privilege recognized by the courts for private litigants.[53] 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.[54]

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.[55]

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.[56] 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.[57]

In a criminal case, the "conclusion of the litigation" for purposes of the termination of the work product exemption occurs when the conviction and sentence have become final.[58] However, the state attorney may still claim the work product exemption for his or her current file in a pending motion for postconviction relief because there is ongoing litigation with respect to those documents.[59]

D. Personnel records

1. Personnel records open to inspection unless exempted by law

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted an agency's 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.[60]

In accordance with this principle, the following are some of the personnel records which have been determined to be subject to disclosure:

Applications for employment[61]

Communications from third parties[62]

Grievance records[63]

Resumes[64]

Salary information[65]

Travel vouchers[66]

Accordingly, an agency should assume that all information in a personnel file is subject to inspection unless a specific statutory exemption exists which would permit withholding a particular document from disclosure.

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.[67]

2. Privacy concerns

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure.[68] 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.[69]

Public employers should note, however, that a court has held that an agency must provide an 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.[70]

3. Separate files

An agency is not authorized to maintain personnel records of its employees under two headings, one open and one confidential, in the absence of statutory authorization.[71] Absent a statutory exemption for such records, a city may not agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file.[72] Similarly, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act.[73]

4. Collective bargaining agreements

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act.[74] 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."[75]

Similarly, unless authorized by law, a city may not agree through 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.[76]

5. Statutory exemptions applicable to law enforcement personnel

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees.[77] However, there are some exemptions which apply specifically to law enforcement personnel records.

a. Complaints filed against law enforcement officers

(1) Scope of exemption and duration of confidentiality

Section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency's investigation of the complaint, are confidential *until* the investigation is no longer active *or* until the agency head or his 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.

Section 112.531(1), F.S., defines "law enforcement officer" for purposes of the statute 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 this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S.[78]

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption.[79] However, the complaint must be in writing in order for the confidentiality provisions to apply.[80] Moreover, s. 112.533, F.S., applies to complaints and records obtained pursuant to the agency's investigation of the complaint; the statute 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.[81] Thus, a circuit judge ordered a police department to provide the press with a copy

of an unredacted incident report that identified a police officer involved in a shooting of an armed suspect.[82]

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.[83] 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.[84]

The exemption is of limited duration. 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.[85]

Thus, a court found the exemption ended once the sheriff's office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken.[86]

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 the information public prior to the conclusion of the investigation.[87] 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."[88]

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.[89]

(2) Law enforcement officer's access

Section 112.533(2)(a), F.S., states that the confidential nature of the complaint does not preclude the officer who is the subject of the complaint, along with legal counsel or any other representative of his or her choice, from reviewing the complaint and all statements, regardless of form, made by the complainant and witnesses immediately prior to the beginning of the investigative interview. If the witness is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and statements of the complainant and nonincarcerated witnesses may be reviewed by the officer.[90]

Thus, the officer who is the subject of the complaint may have access to confidential information prior to the time that such information becomes available for public inspection.[91] However, s. 112.533(2)(b), F.S., qualifies the officer's right of access by stating that the disclosure provisions do not apply to any record that is exempt from disclosure under Ch. 119, F.S., such as active criminal investigative information.

The limited access to the complaint and witness statements provided by s. 112.533(2)(a), F.S., does not restrict the officer's (or the public's) access to otherwise public records, such as incident reports because "[t]here is no indication in section 112.533 . . . that the Legislature intended to make public records that are open to public inspection and copying unavailable to a law enforcement officer who is the subject of a complaint under investigation by a law enforcement agency."[92]

Moreover, notwithstanding the provisions of s. 112.533(2), F.S., if an officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer shall, upon request, be provided with a complete copy of the investigative report and supporting documents and be given the opportunity to address the findings in the report with the employing agency prior to the imposition of such disciplinary action.[93]

A law enforcement officer or correctional officer has the right to review his or her official personnel file at any reasonable time under the supervision of the designated records custodian.[94] An

officer may attach to the file a concise statement in response to any items included in the file identified by the officer as derogatory and copies of such items must be made available to the officer.[95]

(3) Limitations on disclosure

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S., such as active criminal investigative or intelligence information as defined in s. 119.011(3), F.S.

For example, if a complaint generates documents containing active criminal investigative information which is exempt pursuant to s. 119.071(2)(c), F.S., the provisions of the Public Records Act would control disclosure of that information, rather than s. 112.533(2), F.S.[96] 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.[97]

Similarly, information which would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since that information is exempt pursuant to s. 119.071(2)(h), F.S.[98]

Additionally, it has been held that 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.[99]

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.[100]

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.[101]

(4) Unauthorized disclosure penalties

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)."[102] In addition, a sheriff, police chief, or his or her designee, may publically acknowledge the existence of a complaint and the fact that an investigation is underway.[103]

The Attorney General's Office has issued several advisory opinions interpreting this statute.[104] However, in 2005, the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., is unconstitutional. In its decision, the Court of Appeals concluded that "[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government."[105]

b. Home addresses, telephone numbers, and photographs

Section 119.071(4)(d)1., F.S., contains a specific exemption for 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 and photographs of active or former law enforcement personnel, including correctional and correctional probation officers,... and the home addresses, telephone numbers, social security numbers, 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...

The same exemptions also apply to current or former prosecutors.[106]

An agency that is the custodian of personal information specified in s. 119.071(4)(d), F.S., but is not the past or present employer of the officer or employee, must maintain the exempt status of the information only if the officer or employee or the employing agency of the designated officer or employee submits a written request for maintenance of the exemption to the custodial agency.[107]

The purpose of the s. 119.071(4)(d)1., F.S., exemption is to protect the safety of law enforcement personnel and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. Accordingly, 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.[108]

The Attorney General's Office has advised that s.119.071(4)(d)1., F.S., does not exempt booking photographs of law enforcement and correctional officers from disclosure unless they are undercover personnel whose identity would otherwise be protected by s. 119.071(4)(c), F.S.[109] However, a circuit judge ruled that if the officer has filed a written request for confidentiality (*see* s. 119.071[4][d]8., F.S.), the booking photograph may not be released.[110]

While s. 119.071(4)(d)1., F.S., exempts the home addresses, telephone numbers, social security numbers and photographs from the mandatory disclosure requirements of the Public Records Act, it does not prohibit the city from maintaining the names and addresses of its law enforcement officers.[111] 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.[112]

Section 119.071(4)(d)1., F.S., does not contain a definition of "law enforcement personnel." Thus, the scope of the exemption is not clear. This office has noted this problem and has recommended that the Legislature clarify the statute.[113]

c. 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.[114]

However, a circuit court has noted that the exemption from disclosure now found in s. 119.071(1)(a), F.S., for employment examination questions and answers could exempt some information contained in pre-employment polygraph records.[115]

d. Undercover personnel

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. However, in *Ocala Star Banner Corporation v. McGhee,*[116] 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.[117]

6. Statutory exemptions applicable to public employees generally

As emphasized in the preceding discussion, the exclusive authority to exempt personnel records from disclosure is vested in the Legislature. A number of exemptions have been enacted relating to various kinds of personnel records. The following are examples of some of the exemptions provided by statute.

a. Annuity or custodial account activities

Records identifying individual participants in any annuity contract or custodial account under this section (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.[118]

b. Complaints

Complaints filed against law enforcement officers and all information obtained pursuant to the investigation of the complaints are confidential and exempt from s. 119.07(1), F.S., until the investigation is no longer active or the officer has been provided with written notice of the agency's decision as to whether charges will or will not be filed.[119] See pages 14 to 18 for more detailed discussion.

Where an 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), F.S.[120]

Complaints and other records in the custody of a unit of local government which relate to a complaint of discrimination 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.[121]

Complaints and other records in the custody of an agency in the executive branch of state government 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.[122]

c. 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 from s. 119.07(1), F.S.[123]

d. 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 beneficiaries, i.e., persons who are drawing salary or retirement benefits from the state or who are the recipients of any lawful payment from state funds, are confidential and exempt.[124] Section 119.071(5)(b), F.S., exempts from public disclosure bank account numbers held by an agency.

e. Drug test results

In AGO 94-51, the Attorney General's Office concluded that a city was not authorized to delete or remove consent forms or records of disciplinary action relating to drug testing of city employees contained in personnel records, as the personnel records are public records and the Public Records Act "contains no express exemption for such information." However, 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 from s. 119.07(1), F.S., and may not be disclosed except as authorized in the statute.[125]

The provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, but the provisions of 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.[126] 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 operated under Ch. 440.

f. 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.[127]

g. 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.[128]

A person who has taken an examination has the right to review his or her own completed examination.[129] 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.[130]

The exemption from disclosure applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners.[131]

h. 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.[132] Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order.[133]

Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from s. 119.07(1), F.S.[134]

Patient medical records and claims records of current or former

state employees and eligible dependents enrolled in group insurance plans of the state 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.[135]

Section 112.08(7), F.S., provides that all medical records and claims records of current or former county or municipal employees and eligible dependents enrolled in a county or municipal group insurance plan are confidential and exempt from s. 119.07(1), F.S.; such records may not be furnished to any person other than the employee or his legal representative, except as authorized in the subsection.

i. Retiree names and addresses

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.[136] A person, however, may view or copy an individual's retirement records at the Department of Management Services, one record at a time.[137]

j. Ridesharing information

Any information provided to a state or local government agency for the purpose of forming ridesharing arrangements which reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, F.S., is exempt from s. 119.07(1), F.S.[138]

k. Sealed or expunged criminal history records

Sections 943.0585 and 943.059, F.S., prohibit a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record.[139]

E. Social security numbers

Section 119.071(5)(a)5., F.S., states that all social security numbers held by an agency are confidential and exempt from public disclosure requirements.[140] Disclosure to another governmental agency is authorized if disclosure is necessary to the performance of the agency's duties and responsibilities.[141]

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

A. May an agency impose its own restrictions 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.

A custodian of public records may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access.[142]

Any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject.[143] A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S., a general law.[144]

B. 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 former state citizenship requirement was deleted from the law in 1975. 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.[145]

C. Must an individual show a "special interest" or "legitimate interest" in public records before being allowed to inspect or copy same?

No. Chapter 119, F.S., requires no showing of purpose or "special interest" as a condition of access to public records.[146] "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act."[147]

As the court stated in *Lorei v. Smith*: [148]

> The legislative objective underlying the creation of chapter 119 was to insure to the people of Florida the right freely to gain access to governmental records. The purpose for such inquiry is immaterial.

"[T]he 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."[149]

Section 817.568, F.S., however, provides criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes. Criminal use of a public record or public records information is proscribed in s. 817.569, F.S.

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

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." However, this statute 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."[150]

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.[151] But, "the mere fact 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."[152] In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship.[153]

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 to inspect or copy public records.[154] 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.[155]

E. 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?

No. An agency is not authorized to refuse to allow inspection of public records on the grounds that the documents have been placed in the actual possession of an agency or official other than the records custodian.[156]

Thus, in *Barfield v. Florida Department of Law Enforcement*,[157] 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.

Pursuant to the Public Records Act, public records may routinely be removed from the building or office in which such records are ordinarily kept only for official purposes. The retention of such records in the home of a public official 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.[158] 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.[159] Any delay in production of the records beyond what is reasonable under the circumstances may subject the custodian to liability for failure to produce public records.[160]

An agency is not authorized to 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 information pursuant to a contract between the agency and the private company.[161]

F. 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.[162] 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.[163]

G. May an agency refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity?

No. In *State ex rel. Davidson v. Couch*,[164] the Court specifically rejected a contention that a custodian was authorized to require identification of a particular book or record to be examined.

Accordingly, in the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of documents involved or possible inconvenience. Note, however, that pursuant to s. 119.07(4)(d), F.S., the custodian is authorized 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.

H. May an agency require that a request to inspect or copy public records be made in writing or require that the requestor furnish background information to the custodian?

No. Chapter 119, F.S., does not authorize an agency to require that requests for records must be in person or in writing.[165] 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.

In addition, a person requesting access to or copies of public records may 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.[166]

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.[167]

I. Is an agency required to: answer questions about its public records; create a new record in response to a request for information; or reformat its records in a particular form as demanded by the requestor?

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.[168] However, a custodian is not required to give out *information* from the records of his or her office.[169] 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.[170]

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, or reformat its records to provide them in a particular form, in order to accommodate a request for information from the agency.[171] 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.[172] 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.[173]

J. When must an agency respond to a public records request?

The Public Records Act 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."[174]

A municipal policy which provides for an automatic delay in the

production of public records is impermissible.[175] 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.[176] Similarly, this 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.[177]

An agency's unreasonable and excessive delays in producing public records can constitute an unlawful refusal to provide access to public records.[178]

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.[179] 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.[180] 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.[181]

K. In the absence of express legislative authorization, may an agency refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document?

No. To allow the maker or sender of documents to dictate the circumstances under which the documents 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.[182]

L. 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 from inspection.[183] Thus, in *Weeks v. Golden*,[184] the court found an agency's response that it had provided all records "with the exception of certain information relating to the victim" to be inadequate because the response "failed to identify with specificity either the reason why records were believed to be exempt, or the statutory basis for any exemption."[185]

M. May an agency refuse to allow inspection and copying of an entire public record on the grounds that a portion of the record contains information which is exempt from disclosure?

No. Where a public record contains some information which is exempt from disclosure, s. 119.07(1)(d), F.S., requires the custodian of the document 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.[186]

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.[187]

N. 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."[188]

However, although an agency may not claim privacy interests as a basis for denying access to nonexempt public records, the subject of the records may, in some limited circumstances, be able to ask the court to restrict access to certain records. Thus, in *Post-Newsweek Stations, Florida, Inc. v. Doe*,[189] the Florida Supreme Court held that a person who was not a party in the case could ask the court to balance the public's right of access to pretrial criminal discovery material against that person's constitutional right to privacy.[190]

O. What is the liability of a custodian for release of public records?

It has been held that there is nothing in Ch. 119, F.S., indicating an intent to give private citizens a right to recovery for negligently maintaining and providing information from public records.[191]

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business.[192] However, the Attorney General's Office has stated that a law enforcement agency's release of sexual offender records for purposes of public notification is consistent with its duties and responsibilities.[193]

V. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO LAW ENFORCEMENT RECORDS?

A. Active criminal investigative and intelligence information exemption

1. Purpose and scope of exemption

Arrest and crime reports are generally considered to be open to public inspection.[194] However, s. 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.[195]

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report.[196]

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.[197]

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*,[198] "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display."[199]

The law enforcement agency seeking the exemption has the burden of proving that it is entitled to it.[200]

2. 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."[201]

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."[202]

"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."[203]

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."[204]

"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, including the Department of Corrections.[205]

A "criminal justice agency" is also defined to include "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."[206]

3. 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 pages 51 to 55, regarding confidentiality of 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;

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

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the "time, date, and location of the incident and of the arrest" cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information.[207]

4. 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.[208] 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.[209]

For example, in *Bludworth v. Palm Beach Newspapers, Inc.*,[210] the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. The state attorney had argued that the documents could be withheld because the criminal investigation was still "active" and "active" criminal investigative information is exempt from disclosure. However, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information.[211]

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

1) If the information would reveal 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.[212]

For example, in *Florida Freedom Newspapers v. McCrary*,[213] the Supreme Court approved a lower court order temporarily denying public access to pretrial discovery materials (transcribed statements taken by the state) that were furnished to a criminal defendant under the Rules of Criminal Procedure, even though the materials in question were public records under Ch. 119, F.S. As stated by the Court:[214]

> There is in Florida a statutory right of access to [pretrial discovery material] when it becomes a public record, but that statutory right must be balanced against the constitutional rights of a fair trial and due process.

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

a. Active criminal investigative information

Criminal investigative information is considered active (and, therefore, exempt from disclosure) "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."[215] Information in cases barred from prosecution by a statute of limitation is not active.[216]

The definition of "active" requires "a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future."[217] 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.[218]

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations.[219] The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive.[220]

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.[221] 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.[222]

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be "reactivated" and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not been viewed by the public during its "inactive" status and the file was now part of an active criminal investigation and therefore exempt from disclosure under s. 119.071(2)(c)1., F.S.[223]

In another case, however, the appellate court upheld a court

order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery.[224]

b. Active criminal intelligence information

In order to constitute exempt "active" criminal intelligence information, the information "must be of the type that will lead to the 'detection of *ongoing or reasonably anticipated criminal activities*.'"[225] Thus, a court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files."[226]

However, as the Attorney General's Office concluded in AGO 94-48, information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement pursuant to s. 943.03(12), F.S., constitutes active criminal intelligence and criminal investigative information. Even though some of the information in the system may have come from non-active investigations, "it is collected by FDLE to anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations."

c. Pending prosecutions or appeals

Criminal intelligence and investigative information is also considered to be "active" while such information is directly related to pending prosecutions or direct appeals.[227]

Once the conviction and sentence have become final, criminal

investigative information can no longer be considered to be "active."[228]

It should be emphasized that the determination as to whether investigatory records are related to pending prosecutions or appeals are "active" or not 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.[229]

6. Does a criminal defendant's public records request 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 postconviction proceedings." Thus, a criminal defendant's public records request for nonexempt law enforcement records relating to the defendant's pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation.[230]

7. 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.[231] However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents.[232]

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

It has been held that exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status, because 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."[233] 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.[234]

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.[235]

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, a court ruled 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.[236]

9. 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.[237]

For example, in *New Times, Inc. v. Ross*,[238] it was held that papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection. The court reasoned that the civil litigation materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation.

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring such records to the Florida Department of Law Enforcement.[239]

However, a request of a law enforcement agency to inspect or copy a public record that is in the custody of another agency, the custodian's response to the request, and any information that would identify the public record that was requested by the law enforcement agency or provided by the custodian are exempt from disclosure requirements, during the period in which the information constitutes active criminal intelligence or criminal investigative information.[240]

The law enforcement agency must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that the custodian's response to the request and information that would identify the public record requested are available to the public.[241]

Thus, while agency records are not exempt merely because they have been submitted to the Florida Department of Law Enforcement (FDLE), s. 119.071(2)(c)2., F.S., exempts FDLE's request to inspect or copy records, as well as the agency's response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active.[242] Accordingly, while 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 an active criminal investigation.[243]

10. 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)(b), 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.[244]

11. 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. The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies."[245] Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement.[246]

12. 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.[247]

B. Autopsy records

1. 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.[248]

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."[249] And statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may also apply to portions of the autopsy report itself.[250]

2. 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.[251]

C. "Baker Act" reports

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.[252]

However, in AGO 93-51, this office noted that a written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, which 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.

D. Confessions

Section 119.071(2)(*e*), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition.[253]

E. Confidential informants

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such.[254]

However, in *Ocala Star Banner Corporation v. McGhee*,[255] the court held that a police department should not have refused to release an entire police report on the ground that the report contained some information identifying a confidential informant. According to the court, "[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity) . . . can be taken out of the report and the remainder turned over to [the newspaper]."[256]

Moreover, in *City of St. Petersburg v. Romine*,[257] the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt

from disclosure, but said that "this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person's information or suspicion."[258]

F. Criminal history information

1. Criminal history information generally

Except where specific exemptions apply, criminal history information is a public record.[259]

However, s. 943.053(2), F.S., provides restrictions on the dissemination of criminal history information obtained from *federal* criminal justice information systems and *other states* by stating that such information shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection.[260]

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.[261]

2. Sealed and expunged records

Access to criminal history records which have been sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations or other formal criminal

charges and the disposition of those charges.[262] However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S.[263]

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.[264] Similar provisions exist relative to disclosure of sealed criminal history records.[265] 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.[266]

G. Criminal Justice Standards and Training Commission records

Section 943.1395(6)(b), F.S., provides that a report of misconduct and all records or information provided to or developed by the Criminal Justice Standards and Training Commission during the course of an investigation conducted by the commission are exempt from s. 119.07(1), F.S., and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive.[267] 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 Criminal Justice Standards and Training Commission.[268]

H. Domestic violence

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.

If the copy of the report of domestic violence involves a sexual battery, child abuse, or lewd, lascivious or indecent assault upon or in the presence of a child, the identity of the victim must be excised from the report.[269] Such victim identifying information is confidential pursuant to s. 119.071(2)(h), F.S. In addition, if required by juvenile confidentiality laws, the identity of a juvenile who is alleged to have committed a criminal act must not be included in the report.[270]

A petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons.[271] In addition, s. 119.071(2)(j)1., F.S., provides that a domestic violence victim may file a written request, accompanied by official verification that a crime has occurred, to have his or her home or employment address, home or employment telephone number, or personal assets exempt from disclosure.[272] There are no exceptions to the provisions of s. 119.071(2)(j)1., F.S., for copies of the police report that are sent to the domestic violence center; 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.[273]

Section 787.03(6)(c), F.S., states that the 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 requirements.

The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence, established in ss. 741.401-741.409, F.S., are exempt from disclosure, except that the information may be disclosed under the following circumstances: to a law enforcement agency for

purposes of assisting in the execution of a valid arrest warrant; if directed by court order, to a person identified in the order; or if the certification has been canceled.[274]

I. Emergency Communications E911 voice recordings

Section 365.171(12), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is 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.[275]

A tape recording of a "911" call is a public record which is subject to disclosure after the deletion of the exempt information.[276] 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.[277]

J. Fingerprint records

Biometric identification information is exempt from s. 119.07(1), F.S.[278] The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints.[279]

K. Firearm records

Section 790.335(2), F.S., states that no governmental agency "or

any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms." Exceptions to the prohibition are included in s. 790.335(3), F.S., and include, among other things, records of firearms used in committing a crime and records relating to any person who has been convicted of a crime.[280]

L. HIV (AIDS) test results

There are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute.[281]

A person who receives the results of a test pursuant to s. 384.287, F.S. [authorizing law enforcement officers, FDLE support personnel, specified emergency medical personnel and firefighters who, in the course of their employment, come into contact with a person such that a significant exposure has occurred, to request screening of the person for sexually transmissible disease and providing limited disclosure of the test results], which results disclose HIV infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004, F.S. Violation of this subsection is a first degree misdemeanor.[282]

M. Juvenile offender records

1. Confidentiality

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:

> *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. With the exception of specified persons and agencies, juvenile records in the custody of that agency "may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper."[283]

Thus, as a general rule, access to records of juvenile offenders is limited.[284] 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.[285] 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.[286]

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S., "may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime."[287] 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.[288]

2. Exceptions to confidentiality

a. Child traffic violators

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations.[289]

b. Felony arrests and adult system transfers

Until October 1, 1994, law enforcement agencies generally could release only the name and address of juveniles aged 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. 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 a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release.[290]

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.[291] Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause.[292]

c. Mandatory notification to schools

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult or a crime of violence.[293]

d. 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 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."[294]

e. Sexual Offenders

A juvenile who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting or conspiring to commit, sexual battery or some types of lewd battery or lewd molestation or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense is required to register as a sexual offender.[295] Section 985.04(6)(b), F.S., provides that sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., is a public record pursuant to s. 119.07(1), F.S., and as otherwise provided by law.

N. Motor vehicle records

1. Crash reports

Motor vehicle crash records are confidential for a period of 60 days after the report is filed.[296] However, such reports may be made immediately available to the parties involved in the crash, their legal representatives, their insurance companies and agents, prosecutorial authorities, victim services programs, and certain print and broadcast media as described in the exemption.[297] The owner of a vehicle involved in a crash is among those authorized to receive a copy of the crash report immediately.[298]

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.[299]

"As a condition precedent to accessing a crash report within 60 days after the date 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."[300]

2. Department of Highway Safety and Motor Vehicles records

Section 119.0712(2)(a), F.S., provides, with specified exceptions, that personal information contained in a motor vehicle record that identifies the subject of that record is exempt from public disclosure requirements. 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 (department).[301] The exemption applies only to personal information contained in motor vehicle records of the department and does not authorize a sheriff's office to exempt such personal information from its records.[302]

O. 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.[303] 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.[304] Also, the prohibition against maintaining a list of firearms and firearm owners in s. 790.335, F.S., is not applicable to paper pawn tickets.[305]

P. 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 an executioner; and records that are otherwise confidential or exempt by law.[306]

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail.[307]

Q. Resource inventories and emergency response plans

Section 119.071(2)(d), F.S., exempts "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(3). . . ." Thus, a court found 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.[308]

R. Security system information

A security system plan or portion thereof that is held by an agency is confidential and exempt from disclosure requirements.[309] 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.[310]

The term "security system plan" includes records relating 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.[311]

In addition, those portions of any meeting which would reveal a security system plan or portion thereof are exempt from the provisions of the Sunshine Law.[312]

Sections 281.301 and 119.071(3)(a), F.S., preclude public disclosure of the names and addresses of applicants for security system permits, of persons cited for violations of alarm ordinances, or of reports of law enforcement for verified or false alarms.[313]

S. 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. This subsection also restricts access to comprehensive resource inventories and plans relating to emergency response except for those agencies specified therein who have an official need for such access.

T. Victim information

Although s. 119.071(2)(c)1., F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of . . . a victim of a crime, except as provided in s. 119.071(2)(h)", F.S., are specifically excluded from the definition of criminal investigative or intelligence information.[314] 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 generally, and those which apply to the victims of certain crimes, follows.

1. Amount of stolen property

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

investigative information which reveals the personal assets of a crime victim, which were not involved in the crime, is exempt from disclosure. However, the Attorney General's Office has stated that this exemption does not apply to information relating to the amount of property stolen during the commission of a crime.[315]

2. Commercial solicitation of victims

Section 119.105, F.S. provides that police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential.[316] 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."[317]

3. Documents regarding victims which are received by an agency

Section 119.071(2)(j)1., F.S., exempts from disclosure any document which reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is *received* by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents *received* by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these agencies.[318] Accordingly, this exemption does not apply to police reports.[319]

Section 119.071(2)(j)1., 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."[320]

4. Home or employment address, telephone number, assets

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

> Any information not otherwise held confidential or exempt [from disclosure] which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of *sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence* is exempt [from disclosure] *upon written request by the victim* which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. (e.s.)

The preceding exemption is not limited to documents *received* by an agency, but exempts specified information in records — whether generated or received by — an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification that an applicable crime has occurred as provided in the statute.[321] The exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity.[322]

The incident report or offense report for one of the listed crimes may constitute "official verification that an applicable crime has occurred."[323] In addition, the requirement that the victim make

a written request for confidentiality applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions applicable to crime victims.[324] The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for confidentiality.[325]

5. Information revealing the identity of victims of sex offenses and of child abuse

a. Law enforcement and prosecution records

Section 119.071(2)(h)1., F.S., provides a comprehensive exemption from disclosure for information which would reveal the identity of victims of sexual offenses prohibited in Chs. 794, 800 and 827, F.S., or of child abuse as proscribed in Ch. 827, F.S. The exemption includes the "photograph, name, address, or other fact or information" which would reveal the identity of the victim of these crimes. The exemption applies to "any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings," which may reveal the victim's identity.[326]

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 by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S.[327]

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under Chs. 794, 800, or 827, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim.[328]

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 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.[329]

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of a sexual offense 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, 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.[330]

However, disclosure is authorized in some circumstances. For example, the Crime Victims' Services Office in the Attorney General's Office is authorized by statute to receive confidential records from law enforcement and prosecutorial agencies.[331] In addition, the identity of a victim who has died from suspected child abuse is not exempted from public disclosure.[332]

b. Department of Children and Family Services 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. This 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 Family Services 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.[333]

Confidential abuse information *received* by law enforcement

agencies from the Department of Children and Family Services retains its confidential status in the hands of the receiving agency.[334] 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.

6. Domestic violence victims

For a discussion of exemptions applicable to domestic violence victims, please refer to the discussion relating to domestic violence on pages 48 and 49.

U. Relocated victim or witness information

Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee created pursuant to statute, which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services by the state attorney or statewide prosecutor is confidential and exempt from disclosure. Identity and location of immediate family members of such victims or witnesses are also protected as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protection services.[335]

V. Crime prevention councils

The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss active criminal investigative information or active criminal intelligence information and such portions of meetings are exempt from open meetings requirements, provided that the conditions set forth in the statute are met.[336] A tape recording of, and any minutes and notes generated during, the closed portion of a meeting are confidential and exempt until the criminal investigative or intelligence information ceases to be active.[337]

A similar exemption applies to meetings and records of the Domestic Security Oversight Council.[338]

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

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

As noted in AGO 85-03, 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. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law.[339]

Section 119.07(4)(d), F.S., 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 and based on the labor or computer costs actually incurred by the agency. Thus, 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.[340] 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.[341]

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

Section 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 . . . ." (e.s.). In addition, 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 . . . ."[342]

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.[343]

C. Does Ch. 119, F.S., exempt 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.[344]

However, an agency is not precluded from providing informational copies of public records without charge.[345]

D. 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. For example, the Attorney General's Office 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.[346]

E. 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 8½ inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy.[347]

A charge of up to $1.00 per copy may be assessed for a certified copy of a public record.[348]

For other copies, the charge is limited to the actual cost of duplication of the record.[349] 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."[350]

F. May an agency charge for travel costs, search fees, development costs and other incidental costs?

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.[351] Thus, an agency may not charge for travel time and retrieval costs for public records stored off-premises.[352]

An agency should not consider the furnishing of public records to be a "revenue-generating operation."[353] Similarly, an agency may not charge fees designed to recoup the original cost of developing or producing the records.[354]

Unless a specific request for copies involves 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.[355] The imposition of the service charge, however, is dependent upon the

nature or volume of records requested, not on the cost to either develop or maintain the records or the database system.[356]

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

The Attorney General's Office has advised that 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.[357]

H. 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.[358]

Unless the nature or volume of public records to be inspected or copied requires "extensive" use of information technology resources or "extensive" clerical or supervisory assistance, the special service charge is not authorized. If authorized due to the nature or volume of a request, the special service charge should not be routinely imposed, but should reflect the information technology resources or labor costs actually incurred by the agency.[359]

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 an "excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act."[360] Accordingly, the court remanded the case and required the agency to "explain in

more detail the reason for the magnitude of the assessment."[361]

1. What is the meaning of the term "extensive" as used in the statute?

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.[362] The agency rule defined "extensive" to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. The court agreed with the hearing officer that the burden was on the challenger to show that the administrative rule was invalid under Ch. 120, F.S., and the record did not indicate that the officer's ruling was "clearly erroneous" in this case.

In light of the lack of clear direction in the statute as to the meaning of the term "extensive" and the possible limited application of the First District Court of Appeal case, it may be prudent for agencies to define "extensive" in a manner that is consistent with the purpose and intent of the Public Records Act and that does not constitute an unreasonable infringement upon the public's statutory and constitutional right of access to public records.

2. What is meant by the term "information technology resources" as used in the statute?

"Information technology resources" is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training.[363] The term does not include a videotape or a machine to view a videotape.[364] 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.[365]

3. What is meant by the term "clerical or supervisory

assistance" as used in the statute?

a. 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.[366] 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.[367]

b. How should the labor cost be calculated?

In *Board of County Commissioners of Highlands County v. Colby*, the Second District Court of Appeals held 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.

The term "supervisory assistance" has not been widely interpreted. In *State v. Gudinas*, the circuit judge approved a rate of $35 per hour for an agency attorney's review of exempt material in a voluminous criminal case file, noting 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 . . . ."[369] The court also concluded that an agency could charge only a clerical rate for the time spent making copies, even if due to staff shortages, a more highly paid person actually did the work.

4. 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), F.S., states that the custodian shall provide copies of public records "upon payment of the fee prescribed by law . . . ."[370]

In *Malone v. City of Satellite Beach*,[371] the court noted that a city's requirement of an advance deposit was contemplated by the Public Records Act and that the city "was authorized to require the payment of an advance deposit under the facts of this case before proceeding with the effort and cost of preparing the voluminous copies requested by the plaintiff." If an agency is asked for a large number of records, the fee should be communicated to the requestor before the work is undertaken.[372] As the court stated in *Herskovitz v. Leon County*, "[i]f 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."[373]

I. Traffic reports

In the absence of a statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from local 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. Section 321.23(2)(a), F.S., provides that the fee to obtain a copy of a crash report from the department is $2.00 per copy. A copy of a homicide report is $25 per copy.[374] Separate charges are provided for photographs.[375]

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

A. Mediation

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: 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: http://www.myfloridalegal.com.

B. Civil action

1. Remedies

A person who has been 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.[376]

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.[377]

Generally, mandamus is the appropriate remedy to enforce compliance with the Public Records Act.[378] If the requestor's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits.[379]

However, it has been held that mandamus is not appropriate when the language of an exemption statute requires an exercise of discretion.[380]

2. Attorney's fees

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 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.[381]

Attorney's fees are recoverable even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure.[382] A town's defense that the delay in production

of records was caused by either the intentional wrongdoing or ineptitude of its clerk is not a valid basis for denying recovery of attorney's fees and costs under s. 119.12, F.S.[383]

An "unjustified failure to respond to a public records request until after an action has been commenced to compel compliance amounts to an unlawful refusal" for purposes of s. 119.12, F.S.[384]

C. 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 is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or $1,000 fine, or both.[385]

VIII. HOW LONG MUST AN AGENCY RETAIN A PUBLIC RECORD?

A. 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.[386]

B. Retention and disposal of 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.[387]

The division "shall give advice and assistance to public officials

to solve problems related to the preservation, creation, filing and public accessability of public records in their custody."[388] Public officials shall assist the division by preparing an inclusive inventory of categories of public records.[389] The division shall establish a time period for the retention or disposal of each series of records.[390]

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." The division is required to adopt reasonable rules relating to destruction and disposition of records.[391]

Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the statutory restrictions on disposal of records.[392]

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, this 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 information from public access requirements, it does not exempt such 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.[393]

For more information about retention and disposal of public records, please contact the Bureau of Archives and Records Management at the Department of State at 850/245-6750.

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. AGO 04-22.

4. AGO 04-15.

5. AGO 72-356.

6. AGO 88-23.

7. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). *Cf., Gannett Corporation, Inc. v. Goldtrap*, 302 So. 2d 174 (Fla. 2d DCA 1974) (county's concern that premature disclosure of a report could be harmful to the county does not make the document confidential).

8. *See, e.g.*, s. 119.071(1)(d), F.S., providing a limited work product exemption for agency attorneys. However, "under chapter 119 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.'" *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord, Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records. *And see Knight Ridder, Inc. v. Jenne*, No.

04-06327(13) (Fla. 17th Cir. Ct. April 15, 2004) (deputy sheriff's journal which was bought by the deputy using personal funds, which was not circulated for review by anyone, and which contained personal information as well as records of official appointments, did not constitute a public record).

Nevertheless, so-called "personal" notes can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type. *See, e.g., City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department").

9. Section 119.011(2), F.S.

10. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992).

11. *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).

12. *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). *But see State v. Spalding*, 13 F.L.W Supp. 627 (Fla. 15th Cir. Ct. February 28, 2006) (company manufacturing machine utilized by county law enforcement officers to analyze the breath alcohol contents taken from defendants is not acting on behalf of a public agency).

13. *Wisner v. City of Tampa Police Department*, 601 So. 2d 296,

298 (Fla. 2d DCA 1992).

14. *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).

15. AGO 89-39.

16. *See* s. 119.011(11), F.S.

17. AGO 96-34. *And see* AGO 07-14, stating that e-mails sent by public officials in connection with the transaction of official business are subject to disclosure even though the e-mails contain undisclosed or blind recipients and their e-mail addresses.

18. *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.

19. *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003). "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer." Id. at 154. The Court cautioned, however, 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." *Id. at* 151n.2.

20. Section 119.01(2)(f), F.S.

21. *Id.*

22. AGO 91-61. *Cf.,* AGO 06-30, in which the Attorney General's Office stated that an agency may respond to a public records request requiring the production of thousands of documents by composing a static web page where the

responsive public documents are posted for viewing if the requesting party agrees to the procedure and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.

23. *Seigle v. Barry*, 422 So. 2d at 66.

24. AGO 97-39.

25. *Seigle v. Barry*, 422 So. 2d at 66-67.

26. Section 119.01(2)(f), F.S.

27. Section 119.01(2)(b), F.S.

28. Section 119.01(2)(c), F.S.

29. Section 119.07(2)(b), F.S., also requires that the custodian 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.

30. Section 119.07(2)(c), F.S.

31. Section 282.318(2)(a)2., F.S.

32. Section 282.318(2)(a)3., F.S.

33. Section 282.318(2)(a)5., F.S.

34. Section 282.318(2)(a)2., 3., and 5., F.S.

35. Section 119.071(1)(f), F.S. *See* s. 119.011(13), F.S., defining "sensitive" for purposes of agency-produced software.

36. Section 119.071(1)(f), F.S.

37. *See* AGOs 90-104 and 90-102.

38. Building plans and building design calculations which

are labeled "trade secret" and filed with a local building department are not exempt from disclosure under s. 815.04, F.S., merely because they are "computer-generated." AGO 97-87.

39. *See* AGOs 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements), *and* O4-16.

40. *And see* s. 119.071(1)(b)1.b., F.S., providing additional temporary exemptions from disclosure in some circumstances. *See also* s. 119.071(1)(b)2., F.S., providing a temporary exemption for a competitive sealed replies in response to invitations to negotiate.

41. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974).

42. *See Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure).

43. AGO 88-57.

44. Section 119.071(5)(b), F.S.

45. *See Crespo v. Florida Entertainment Direct Support Organization*, No. 94-4674 (Fla. 11th Cir. Ct. April 10, 1995)(telephone bills for calls made by agency official open to public inspection). *Accord, Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991). *And see Media General Operation, Inc. v. Feeney*, 849 So. 2d 3, 6 (Fla. 1st DCA 2003), in which the court rejected an agency's argument that the 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.

46. AGO 99-74. *Cf., Media General Operation, Inc. v. Feeney, supra*, in which the court held that under the circumstances of that case (involving access to records of cellular phone service provided by a political party for legislative employees), records of personal or private calls of the employees fell outside the definition of public records.

47. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). *See also City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.).

48. Section 119.071(1)(d)2., F.S.

49. AGO 00-07 (records of outside attorney fee bills for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

50. AGO 85-89.

51. *Id. And see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998) ("Obviously, an entry on a [billing] statement which identifies a specific legal strategy to be considered or puts a specific amount of settlement authority received from the client, would fall within the exemption. On the other hand, a notation that the file was opened, or that a letter was sent to opposing counsel, would not.").

52. AGO 91-75.

53. AGO 85-89.

54. *See City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city).

55. *See Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995). The judge also concluded that the s. 768.28[16][b], F.S., exemption for risk management files did not apply. *See also* AGO 91-75 (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments).

56. *City of North Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218 (Fla. 1985).

57. *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).

58. *State v. Kokal*, 562 So. 2d 324 (Fla. 1990) (words "pending prosecutions or appeals" means ongoing prosecutions or appeals from convictions and sentences which have not become final).

59. *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). However, the Florida Supreme Court has also 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).

60. *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).

61. AGOs 77-48 and 71-394.

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

63. *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981).

64. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., supra.*

65. *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); AGO 73-30.

66. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., supra; Lewis v. Schreiber, supra.*

67. AGO 92-80. *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980) (firm of consultants hired to conduct an employment search for position of managing director of a public agency was "acting on behalf of" a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of search were public records).

68. See Michel v. Douglas, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist. "Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002).

69. *See News-Press Publishing Company v. Wisher*, 345 So. 2d

646, 648 (Fla. 1977), in which the Florida Supreme Court stated: "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."

70. *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), stating that in construing the due process clause of the U.S. Constitution, it appears that a public employer has the affirmative duty to inform a discharged employee of his right to seek a post-termination name clearing hearing.

71. AGO 73-51.

72. AGO 94-54.

73. AGO 94-75. *Cf.*, s. 69.081(8)(a), F.S., providing, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of a claim against the state or its subdivisions is "void, contrary to public policy, and may not be enforced;" and Inf. Op. to Barry, June 24, 1998, citing to s. 69.081(8)(a), and stating that "a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file."

74. AGO 77-48..

75. *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981).

76. AGO 94-54. Accord AGO 94-75 (municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the

retention schedule approved by the Division of Library and Information Services of the Department of State).

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

78. *And see* s. 112.531(2), F.S., defining "Correctional officer."

79. AGOs 93-61 and 01-34.

80. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991).

81. AGO 96-27.

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

83. AGO 91-73.

84. *Id. See* s. 112.533(2)(b), F.S., providing that the disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

85. AGO 95-59.

86. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

87. AGO 95-59.

88. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

89. Section 112.533(2)(b), F.S. *See City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness--especially, as here, where there is other record evidence which sustains it").

90. Section 112.533(2)(a), F.S.

91. AGO 96-27.

92. *Id.*

93. Section 112.532(4)(b), F.S. "The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal." *Id.*

94. Section 112.533(3), F.S.

95. *Id.*

96. AGO 91-73.

97. *Cf.*, AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

98. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001).

99. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th

DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995).

100. AGO 00-66.

101. AGO 96-05.

102. Section 112.533(4), F.S. *Cf.*, AGO 87-60, in which this office advised that there "is no mechanism in Part VI, Ch. 112, F.S., allowing anyone to waive the confidentiality imposed upon the complaint and attendant investigation."

103. Section 112.533(4), F.S.

104. *See, e.g.*, AGO 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation"); AGO 96-18 (discussions between chief of police and his or her supervisory staff not prohibited). *Cf.*, AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing agency has made its initial findings).

105. *Cooper v. Dillon*, 403 F. 3d 1208, 1218-1219 (11th Cir. 2005).

106. Section 119.071(4)(d)1. and 3., F.S. *And see* s. 119.071(4)(d)7., F.S. (applying exemption to certain employees of the Department of Juvenile Justice).

107. Section 119.071(4)(d)8., F.S. *See* AGO 97-67 (Official Records are public records that are subject to the confidentiality provisions in s. 119.071[4][d]., when confidentiality is requested); AGO 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections); and AGO 04-20 (access to location of law enforcement officer's home on property appraiser's website).

108. AGO 90-50. *And see* AGO 07-21.

109. AGO 94-90.

110. *Fraternal Order of Police, Consolidated Lodge 5-30, Inc. v. The Consolidated City of Jacksonville*, No. 2000-4718-CA (Fla. 4th Cir. Ct. December 21, 2001). *And see Sarasota Herald-Tribune Co. v. Sarasota County Sheriff's Office*, No. 96-1026-CA-01 (Fla. 12th Cir. Ct. March 13, 1996) (denying newspaper's request for booking photograph of sheriff's deputy who had filed a written request for confidentiality).

111. AGO 90-50.

112. Inf. Op. to Reese, April 25, 1989. *And see* Inf. Op. to Laquidara, July 17, 2003, advising that the cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure under s. 119.071(4)(d)1., F.S.

113. Inf. Op. to Morgan, September 28, 1992. In the interim, it has been suggested that agencies, faced with implementing the provisions of s. 119.071(4)(d), F.S., consider utilizing the definition of "law enforcement officer" contained in s. 784.07, F.S. Id. *And see* AGO 07-21. This statute, which imposes increased penalties for assault and battery on law enforcement officers, has a purpose similar to that of s. 119.071(4)(d)1., in that it seeks to protect the safety of such individuals. "Law enforcement officer" is defined for purposes of s. 784.07, F.S., 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; a federal law enforcement officer as defined in s. 901.1505 and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

114. *See, e.g., Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and *Downs v. Austin*, 522 So. 2d 931 (Fla. 1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant's accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

115. *See Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991) (newspaper entitled to access to employment polygraph records "to the extent such records consist of polygraph machine graph strips and examiners' test results, including the bottom portion of the machine graph denoted 'Findings and Comments' or similar designation;" however, agency could redact "any examinee's actual answers to questions or summaries thereof").

116. 643 So. 2d 1196 (Fla. 5th DCA 1994).

117. *Accord, Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997).

118. Section 112.21(1), F.S.

119. Section 112.533(2)(a), F.S.

120. Section 119.071(2)(g), F.S.

121. Section 119.0713(1), F.S. *See City of St. Petersburg v. St. Petersburg Junior College*, No. 93-0004210-CI-13 (Fla. 6th Cir. Ct. January 3, 1994) (exemption no longer applicable once city has issued a "letter of cause" determination following its investigation of a discrimination complaint).

122. Section 119.0711(1), F.S.

123. Section 112.215(7), F.S.

124. Section 17.076(5), F.S.

125. Section 112.0455(11), F.S. *See also* s. 112.0455(8)(l) and (u), F.S.

126. *See* AGO 98-38.

127. Sections 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

128. 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").

129. Section 119.071(1)(a), F.S. *See* AGO 76-210, stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed.

130. AGO 81-12.

131. *See Dickerson v. Hayes*, 543 So. 2d at 837.

132. Section 119.071(4)(b), F.S.

133. *Id. See* AGO 98-17 (exemption "appears to extend to governmental employees the protection for personal medical records that is generally enjoyed by private sector employees").

134. Section 760.50(5), F.S.

135. Section 110.123(9), F.S.

136. Section 121.031(5), F.S.

137. *Id.*

138. Section 119.071(5)(e), F.S.

139. AGO 94-49.

140. 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 specifically authorized by law to do so or is imperative for the performance of that agency's statutorily prescribed duties. Section 119.071(5)(a)2.a., F.S. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement. Section 119.071(5)(a)3., F.S. Each agency must review whether its collection of social security numbers is in compliance with subparagraph 2. and must certify to the President of the Senate and the Speaker of the House of Representatives its compliance with this subparagraph no later than January 31, 2008. Section 119.071(5)(a)4., F.S.

141. Section 119.071(5)(a)(6)., F.S. Upon verified written request, a commercial entity engaged in a "commercial activity" is allowed access provided that the social security number will only be used in the performance of a "commercial activity" as that term is defined in the exemption. Section 119.071(5)(a)7.b., F.S.

142. AGO 75-50.

143. *Tribune Company v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S. Ct. 2315 (1985).

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

145. AGO 75-175.

146. *See State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) (abstract companies may copy documents from the clerk's office for their own use and sell copies to the public for a profit); *and Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 228n.2 (Fla. 3d DCA 1998) ("Booksmart's reason for wanting to view and copy the documents is irrelevant to the issue of whether the documents are public records").

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

148. 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985).

149. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005).

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

151. *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998) (*citing Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5th DCA 1991]).

152. *Id.* at 1361.

153. *Id.*

154. Section 119.07(1)(b), F.S.

155. Section 119.07(1)(c), F.S. 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. *Id.*

156. *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) and 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).

157. No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994).

158. AGO 93-16. *See also* 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).

159. Inf. Op. to Sugarman, September 5, 1997.

160. *Id.*

161. AGO 02-37. *And see James v. Loxahatchee Groves Water Control District*, 820 So. 2d 988 (Fla. 4th DCA 2002), in which the court rejected an agency's argument that it could require a requestor to inspect records at an off-premises location because it would be "disruptive" if the inspection occurred at the agency offices.

162. AGO 86-69.

163. *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976).

164. 156 So. 297, 300 (Fla. 1934). *Compare, Woodard v. State*, 885 So. 2d 444, 446 (Fla. 4th DCA 2004) (records

custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

165. *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").

166. AGOs 92-38 and 91-76. *See also Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself).

167. *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).

168. Sections 119.07(1)(a) and 119.07(4), F.S.

169. AGO 80-57.

170. AGO 92-38.

171. *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983)

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

173. *Id.*

174. *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985).

175. *Id.* at 1078-1079.

176. *Tribune Company v. Cannella*, at 1078.

177. AGO 96-55.

178. *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA), *review denied*, 684 So. 2d 1353 (Fla. 1996) In Town of Manalapan, the appellate court affirmed the lower court's finding that the town engaged in a "pattern of delays" by taking months to fully comply with the petitioner's public records requests. *See Rechler v. Town of Manalapan*, No. CL 94-2724 AD (Fla. 15th Cir. Ct. November 21, 1994). *See also State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001).

179. AGO 81-12.

180. Inf. Op. to Riotte, May 21, 1990.

181. *Id.*

182. *See Sepro 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 *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (a city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of all material in their personnel files). *Cf., Hill v. Prudential Insurance Company of America*, 701 So. 2d 1218 (Fla. 1st DCA 1997), *review denied*, 717 So. 2d 536 (Fla. 1998) (materials obtained by state agency from anonymous sources during the course of its investigation of an insurance company were public records and subject to disclosure in the absence of statutory exemption, notwithstanding the company's contention that the records were "stolen" or "misappropriated" privileged documents that were delivered to the state without the company's permission).

183. Section 119.07(1)(f), F.S.

184. 764 So. 2d 633 (Fla. 1st DCA 2000).

185. *Id. Cf., City of St. Petersburg v. Romine*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), noting 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." *See also*, AGO 06-04 (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 investigation).

186. *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). *Cf.*, AGO 02-73 (agency must redact confidential and exempt information and release the remainder of the record; agency not authorized to release records containing confidential information, albeit anonymously).

187. AGO 99-52. *And see* s. 119.011(12), F.S., defining the term "redact."

188. *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

189. 612 So. 2d 549 (Fla. 1992).

190. *And see Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993) (child protection statutes and public-records law exceptions give standing to the non-custodian of a public record to assert a statutory exception provided non-custodian is a member of a class the exception is intended to protect).

191. *Layton v. Department of Highway Safety & Motor Vehicles*, 676 So. 2d 1038, 1040 (Fla. 1st DCA 1996); *Friedberg v.*

Town of Longboat Key, 504 So. 2d 52 (Fla. 2d DCA 1987).

192. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

193. AGO 97-09.

194. AGOs 91-74 and 80-96.

195. *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001) ("In order for a record to constitute exempt active criminal investigative information, the claimant must show that the record is both 'active' and that it constitutes 'criminal investigative information.'").

196. AGO 91-74.

197. *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).

198. 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

199. *And see* AGO 90-50. Cf., s. 838.21, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

200. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997); and *Florida Freedom Newspapers, Inc., v. Dempsey*, 478 So. 2d 1128 (Fla. 1st

DCA 1985).

201. Section 119.011(3)(a), F.S.

202. Section 119.011(3)(d), F.S.

203. Section 119.011(3)(b), F.S.

204. Section 119.011(3)(d), F.S.

205. Section 119.011(4), F.S.

206. *Id.*

207. *See* s. 119.011(3)(c)3., F.S.

208. *See* s. 119.011(3)(c)5., F.S.

209. *See Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) (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 what is now s. 119.071[2][b], F.S. [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).

210. 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986).

211. 476 So. 2d at 779n.1. *And see Satz v. Blankenship*, 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied*, 413 So. 2d 877 (Fla. 1982). *Cf., City of Miami v. Post-Newsweek Stations, Florida, Inc.,* 837 So. 2d 1002, 1003 (Fla. 3d

DCA 2002), *review dismissed*, 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided discovery materials to defendant, requested materials were not "given or required by law . . . to be given to the person arrested" and thus did not lose their exempt status as active criminal investigative information).

212. *See Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988); and *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992). *Cf., Times Publishing Co. v. State*, 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative).

213. 520 So. 2d 32 (Fla. 1988).

214. *Id.* at 36.

215. Section 119.011(3)(d)2., F.S.

216. *Id.*

217. *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994).

218. *Id.* at 1016-1017.

219. *See Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

220. *Id.* at 1131.

221. *Barfield v. City of Fort Lauderdale Police Department, supra.*

222. *Id.*

223. *News-Press Publishing Co., Inc. v. McDougall*, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992).

224. *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).

225. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), quoting s. 119.011(3)(d)1., F.S.

226. *Id. Compare, 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).

227. Section 119.011(3)(d), F.S. *See 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).

228. *State v. Kokal*, 562 So. 2d 324, 326 (Fla. 1990). *Accord, 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).

229. *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), *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).

230. *Henderson v. State*, 745 So. 2d 319 (Fla. 1999).

231. *See Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information).

232. *Arbelaez v. State*, 775 So. 2d 909 (Fla. 2000). *Accord, Church of Scientology Flag Service Org., Inc. v. Woo*d, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (release of the autopsy report and 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").

233. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995).

234. *Id. Accord, Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

235. AGO 96-36.

236. *Woolling v. Lamar*, 764 So. 2d 765 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

237. *See, e.g., Tribune Company v. Cannella*, 438 So. 2d 516, 523 (Fla. 2d DCA 1983), *reversed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he "compiled" the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information).

238. No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992).

239. AGO 88-25. *See also* AGO 92-78 and Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to that department. *Accord*, Inf. Op. to Theobald, November 16, 2006 (while records from the active internal investigation file exempt pursuant to s. 112.533(2), F.S., public records such as overtime slips created prior to the investigation and maintained in law enforcement officer's personnel file are not confidential simply because copies of such records are used in the investigation).

240. Section 119.071(2)(c)2.a., F.S. *And see* AGOs 90-48 (criminal investigative subpoenas issued by clerk of court as part of an active criminal investigation or intelligence gathering operation by the state attorney's office are exempt from disclosure prior to becoming part of the case files maintained by the clerk), and 01-75.

241. Section 119.071(2)(c)2.b., F.S.

242. AGO 06-04.

243. *Id. And see* AGO 01-75; Inf. Op. to Theobald, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

244. *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."

245. *State v. Buenoano*, 707 So. 2d 714, 717 (Fla. 1998).

246. *Id.*

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

248. 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, although drafts and notes taken during an autopsy as well as laboratory reports and photographs are public records).

249. 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).

250. *See Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

251. *See* AGOs 03-25 and 01-47, discussing circumstances under which autopsy photographs and recordings may be viewed or copied. *And see 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.)

252. Section 394.4615(1), F.S.

253. *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"). *And see* AGO 84-33, in which 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 (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 not contain the "substance of a confession" and must be released.

254. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); and *Salcines v. Tampa Television*, 454 So. 2d 639 (Fla. 2d DCA 1984). *Cf., 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). *And see 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 he 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).

255. 643 So. 2d 1196 (Fla. 5th DCA 1994).

256. *Id.* at 1197. *Accord, Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d at 1368.

257. 719 So. 2d 19, 21 (Fla. 2d DCA 1998).

258. *Id.*

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

260. AGO 99-01.

261. Section 943.053(3), F.S.

262. AGO 02-68. *And see* AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585).

263. *Id.*

264. Section 943.0585(4), F.S.

265. Section 943.059(4), F.S.

266. AGO 94-49.

267. However, not more than 30 days before the results of an investigation are to be presented to a probable cause panel, an officer who is being investigated, or the officer's attorney, may review any documents or other information regarding the investigation. Section 943.1395(6)(b)2., F.S.

268. AGO 96-05.

269. AGO 92-14.

270. Inf. Op. to Wierzbicki, April 7, 1992.

271. Section 741.30(3)(b), F.S.

272. Such information ceases to be exempt 5 years after the receipt of the written request. Section 119.071(2)(j)1., F.S.

273. AGO 02-50.

274. Section 741.465(1), F.S.

275. Section 365.171(12), F.S.

276. AGO 93-60.

277. AGO 95-48. *See also* Inf. Op. to Fernez, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

278. Section 119.071(5)(g)1., F.S.

279. *Id.*

280. *Cf.*, AGO 04-52 (prohibition against maintaining list of firearms and firearms owners not applicable to paper pawn transaction tickets). *And see* s. 790.0601, F.S. (personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure requirements and may be released only as provided in the exemption).

281. *See* s. 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(6)(b), F.S. *And see* s. 381.004(6)(c), F.S., establishing felony penalties for disclosure in certain circumstances.

282. Section 384.287(6), F.S.

283. *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.*, s. 943.053(3), F.S., governing release of "[c]riminal history information, including information relating to minors" compiled by the Florida Department of Law Enforcement.

284. *See*, e.g., AGO 07-19 (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); Inf. Op. to Galbraith, April 8, 1992 (city's risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and Inf. Op. to Wierzbicki, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information).

285. AGO 96-65.

286. AGO 97-28. *But see New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003) (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).

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

288. AGO 96-80

289. Section 985.11(3), F.S.

290. AGO 01-64.

291. AGO 95-19.

292. *Id. Cf. In the Interest of Gay*, Petition No. 94-8481 (Fla. 6th Cir. Ct. Juv. Div. December 30, 1994), allowing a newspaper to view "the entire juvenile court files," with the exception of psychological reports, relating to juveniles facing felony charges.

293. Section 985.04(4)(a), F.S.

294. Section 985.036(1), F.S. *And see* ss. 985.04(3) and 960.001(8), F.S., authorizing similar disclosures to victims.

295. Section 943.0435(1)(a)1.d., F.S. *And see* s. 985.4815, F.S.

296. Section 316.066(5)(a), F.S.

297. Section 316.066(5)(b), F.S.

298. AGO 01-59.

299. Section 316.066(5)(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).

300. Section 316.066(5)(d), F.S. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers when the contract states that the confidential information from a crash report will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status. *Id.*

301. Section 119.0712(2), F.S. Personal information includes, but is not limited to, an individual's social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information, and emergency contact information. For purposes of this subsection, personal information does not include information relating to vehicular crashes, driving violations, and driver's status. *Id. And see* s. 316.066(5)(a), F.S., providing limitations on access to crash reports for a period of 60 days after the crash; and s. 322.142(4), F.S., restricting access to reproductions of color photographic or digital imaged driver's licenses.

302. AGO 04-54.

303. Section 539.003, F.S.

304. *Id. And see* AGO 01-51.

305. AGO 04-52.

306. *See 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). *And see* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities, as

provided in statute).

307. *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) (records of private company under contract with sheriff to provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

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

309. Section 119.071(3)(a), F.S. *See also* s. 281.301, F.S., providing a similar exemption.

310. Section 119.071(3)(a), F.S.

311. *Id.*

312. Section 286.0113(1), F.S. Section 281.301, F.S., provides a similar exemption from open meetings requirements. *See* AGO 93-86.

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

314. *See* s. 119.011(3)(c)2., F.S.

315. 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."

316. Section 119.105, F.S.

317. *Id.* A willful and knowing violation of this statute is a third-degree felony. Section 119.10(2)(b), F.S.

318. AGO 90-80.

319. *Id.* Additionally, the exemption does not apply to documents

revealing the identity of a victim of crime which are contained in a court file not closed by court order. AGO 90-87.

320. *See* Inf. Op. to McCabe, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department's internal affairs investigation).

321. *Criminal Law Alert*, Office of the Attorney General, June 29, 1995.

322. *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).

323. *Criminal Law Alert*, Office of the Attorney General, June 29, 1995.

324. *Id.*

325. AGO 96-82.

326. Section 119.071(2)(h)1., F.S. *And see* AGO 03-56.

327. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S. *Cf.*, AGO 03-56 (confidentiality of sexual offense victim information contained in court records).

328. Section 119.071(2)(h)2., F.S.

329. Section 119.071(2)(j)2., F.S.

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

331. Section 960.05(2)(k), F.S. *And see* AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

332. AGO 90-103.

333. *See* AGO 93-54. Accord, Inf. Op. to O'Brien, January 18, 1994. *Cf., Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [*see now*, Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed

victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." *Id.* at 1315.

334. *See* s. 39.202(1) and (2)(b), F.S. *And see* s. 415.107(3)(b), F.S. (abuse records relating to vulnerable adults).

335. Section 914.27, F.S.

336. Section 943.031(7)(c), F.S.

337. Section 943.031(7)(d), F.S.

338. Section 943.0314, F.S.

339. *See State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905). And see 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).

340. AGO 00-11.

341. *Id. See Board of County Commissioners of Highlands County v. Colby,* No. 05-5348 (Fla. 2d DCA, January 25, 2008) (cost of labor may include salary and benefits).

342. *See Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944) ("The best-reasoned authority in this country holds that the right to inspect public records carries with it the right to make copies.").

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

344. *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); *Yanke v. State*, 588 So. 2d 4 (Fla. 2d DCA 1991), *review denied*, 595 So. 2d 559 (Fla. 1992), *cert. denied*,

112 S.Ct. 1592 (1992) (prisoner must pay copying and postage charges to have copies of public records mailed to him). *And see City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006) (labor union must pay the costs stipulated in Ch. 119, F.S., for copies of documents it has requested from a public employer for collective bargaining purposes).

345. AGO 90-81.

346. AGO 03-57.

347. Section 119.07(4)(a)2., F.S.

348. Section 119.07(4)(c), F.S.

349. Section 119.07(4)(a)3., F.S. *Cf.* AGO 05-34 (property appraiser may charge only those fees provided by law; thus, property appraiser could not enter into agreement with private company to provide records in exchange for either in-kind services or a share of the profits or proceeds from the sale of the information by the private company).

350. Section 119.011(1),F.S.

351. AGO 99-41.

352. AGO 90-07.

353. AGO 85-03.

354. AGO 88-23 (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape).

355. AGO 99-41.

356. *Id.*

357. AGO 86-83. *And see* s. 5(a) of Department of Revenue Rule 12A-1.041, F.A.C., stating that "[t]he fee prescribed by law, or the actual cost of duplication, for providing copies of public records . . . under Chapter 119, F.S., is exempt from sales tax."

358. *See* AGO 90-07, stating that a municipal police department may not ordinarily charge for travel time and retrieval costs for public records stored off-premises; however, if the nature or volume of the records requested, rather than the location of the records, is such as to require extensive clerical or supervisory assistance or extensive use of information technology resources, a special service charge may be imposed pursuant to s. 119.07(4)(d), F.S. *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 and reviewing them for exemptions).

359. AGO 90-07. *And see* AGOs 92-38, 86-69 and 84-81.

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

361. *Id.*

362. *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA), *review denied*, 592 So. 2d 680 (Fla. 1991).

363. Section 119.011(9), F.S.

364. AGO 88-23.

365. AGO 99-41.

366. AGO 84-81.

367. *See Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d at 269. A*nd 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."

368. No. 05-5348 (Fla. 2d DCA, January 25, 2008).

369. No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999). *And see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), concluding that an appropriate charge for supervisory review is "reasonable" in cases involving a large number of documents that contain some exempt information.

370. *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.)

371. No 94-10557-CA-D (Fla. 18th Cir. Ct. December 15, 1995), *per curiam affirmed*, 687 So. 2d 252 (Fla. 5th DCA 1997). *And see Board of County Commissioners of Highland County v. Colby, supra.*

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

373. *Id.*

374. Section 321.23(2)(b), F.S.

375. Section 321.23(2)(c), F.S.

376. *See Mills v. State*, 684 So. 2d 801 (Fla. 1996) (no abuse of discretion in trial court's failure to order sheriff's department

to produce certain requested records where there was no demonstration that the records exist); *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).

377. *See Salvador v. Fennelly*, 593 So 2d 1091 (Fla. 4th DCA 1992) (the early hearings provision reflects a legislative recognition of the importance of time in public records cases; such hearings must be given priority over more routine matters, and a good faith effort must be made to accommodate the legislative desire that an immediate hearing be held). *And see Grace v. Jenne*, 855 So. 2d 262 (Fla. 4th DCA 2003), in which a lower court order dismissing a public records complaint filed against a sheriff was overturned by the Fourth District because the judge failed to hold a hearing before entering the order.

378. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA), *review dismissed sub nom., Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). *But see Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989) (injunctive relief appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations; mandamus would not be an adequate remedy since mandamus would not prevent future harm).

379. *Staton v. McMillan, supra. Accord, Gay v. State*, 697 So. 2d 179 (Fla. 1st DCA 1997).

380. S*ee* Shea v. Cochran, 680 So. 2d 628 (Fla. 4th DCA 1996) (mandamus was an inappropriate remedy where sheriff provided a specific reason for refusing to comply with a public records request by claiming the records were part of an active criminal investigation).

381. *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) (prison inmate entitled to recover costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred in the course of litigation when he filed a pro se public records lawsuit and prevailed).

382. *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); N*ews and Sun-Sentinel Company v. Palm Beach County*, 517 So. 2d 743 (Fla. 4th DCA 1987).

383. *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996).

384. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). *Accord, Barfield v. Town of Eatonville, supra* at 224 (appellant entitled to attorney's fees because "[t]he evidence clearly established that it was only after the appellant filed a lawsuit that the documents he had previously sought by written request to the Town were finally turned over to him"). *And see Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Wisner v. City of Tampa Police Department, supra; Brunson v. Dade County School Board*, 525 So. 2d 933 (Fla. 3d DCA 1988). *But see, Alston v. City of Riviera Beach*, 882 So. 2d 436 (Fla. 4th DCA 2004) (denial of attorney's fee claim affirmed because "[t]he record supports the trial court's conclusion that the city had a good faith and reasonable belief that Alston's request applied only to documents under the control of the parks and recreation department and that Alston failed to establish that the city unlawfully withheld police department records"); *Grapski v. Machen*, Case No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (inadvertent failure to produce some records by an agency seeking to comply with a public records request does not necessarily subject the agency to attorney's fees; a finding of an "unlawful" refusal or delay in producing public records requires some proof that the agency or public

official took some action in hindering the production or took no action resulting in the unlawful delay in producing the records).

385. *See State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001). *See also* s. 119.10(1)(a), F.S., providing that a violation of any provision of Ch. 119, F.S., by a public official is a noncriminal infraction, punishable by fine not exceeding $500. A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38. *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).

386. *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 see* s. 119.021(4)(b), F.S., providing that "[w]hoever 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."

387. Section 119.021(2)(b), F.S. *And see* s. 119.021(2)(c), F.S., providing that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, F.S.

388. Section 119.021(2)(d), F.S.

389. *Id.*

390. *Id.*

391. Section 257.36(6), F.S. *See generally*, Chs. 1B-24 and 1B-26, F.A.C. *And see* AGO 04-51, regarding the application of the retention schedules to materials obtained

by law enforcement agencies which become evidence in criminal investigations and prosecutions; and Inf. Op. to Matthews, July 12, 2004, noting the division's statutory responsibility to adopt rules establishing standards for reproduction or duplication of audio or audiovisual tape recordings.

392. AGO 94-75.

393. AGO 93-86. *See* s. 119.021, F.S.

APPENDIX

This appendix does not contain the complete text of Chapter 119, Florida Statutes, but rather selected sections pertinent to the discussions within this Guide. Please refer to the Florida Statutes for the complete text of Chapter 119.

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, 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.

(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. Informations 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 "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.

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

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

(11) "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.

(12) "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.

(13) "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 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 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.

(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 (e) does not relieve the custodian of public 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 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 81/2 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 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.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(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.a. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals 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 a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

b. If an agency rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals, the rejected bids or proposals 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 a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to bid or request for proposals or until the agency withdraws the reissued invitation to bid or request for proposals. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2.a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is 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 a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and

reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected 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 a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(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 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.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from s. 119.07(1).

(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 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) 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. Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827 and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, 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 800, or chapter 827, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. In addition to subparagraph 1., any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under chapter 794, chapter 800, or chapter 827, regardless of whether the photograph, videotape, or image identifies the victim, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to photographs, videotapes, or images held as criminal intelligence information or criminal investigative information before, on, or after the effective date of the exemption.

(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 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.

(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 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:

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) 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 documents are 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 any such documents held by an agency before, on, or after the effective date of this act. 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. As used in this paragraph, the term:

1. "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:

a. For single-performance facilities:

(I) Provides single-performance facilities; or

(II) Provides more than 10,000 permanent seats for spectators.

b. For serial-performance facilities:

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

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

2. "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.

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

a. Provides onsite parking for more than 250 motor vehicles;

b. Encompasses 500,000 square feet or more of gross floor area; or

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

4. "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:

a. Encompasses more than 400,000 square feet of gross floor area; or

b. Provides parking spaces for more than 2,500 motor vehicles.

5. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

6. "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units. This exemption 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.

(4) AGENCY PERSONNEL INFORMATION.—

(a)1. The social security numbers of all current and former agency employees which numbers are contained in agency employment records are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. An agency that is the custodian of a social security number specified in subparagraph 1. and that is not the employing agency shall maintain the exempt status of the social security number only if the employee or the employing agency of the employee submits a written request for confidentiality to the custodial agency. However, upon a request by a commercial entity as provided in subparagraph (5)(a)7.b., the custodial agency shall release the last four digits of the exempt social security number, except that a social security number provided in a lien filed with the Department of State shall be released in its entirety. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) 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.

(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. The home addresses, telephone numbers, social security numbers, and photographs of active or former 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, 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). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, 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). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant

state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, 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.

2. The home addresses, telephone numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. The home addresses, telephone numbers, social security numbers, and photographs of current or former United States attorneys and assistant United States attorneys; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former United States attorneys and assistant United States attorneys; and the names and locations of schools and day care facilities attended by the children of current or former United States attorneys and assistant United States attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

4. The home addresses, telephone numbers, social security numbers, and photographs of current or former judges of United States Courts of Appeal, United States district judges, and

United States magistrate judges; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; and the names and locations of schools and day care facilities attended by the children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

5. The home addresses, telephone numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

6. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820, and the names, home addresses, telephone numbers, and places of employment of the spouses and 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. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

7. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors,

group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, 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. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

8. An agency that is the custodian of the personal information specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., or subparagraph 7. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., or subparagraph 7. shall maintain the exempt status of the personal 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.

(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. Social security numbers collected by an agency may 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.

4.a. 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.

b. Each agency shall certify to the President of the Senate and the Speaker of the House of Representatives its compliance with this subparagraph no later than January 31, 2008.

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.

6. Social security numbers may be disclosed to another agency or governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities.

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

(I) "Commercial activity" means the provision of a lawful product or service by a commercial entity. Commercial activity includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use for insurance purposes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. 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;

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity. The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 9.

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.a. Every agency shall file a report with the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year.

b. The report required under sub-paragraph a. shall list:

(I) The identity of all commercial entities that have

requested social security numbers during the preceding calendar year; and

(II) The specific purpose or purposes stated by each commercial entity regarding its need for social security numbers.

c. If no disclosure requests were made, the agency shall so indicate.

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

11. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

(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. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Any information that would identify or help to locate a child who participates in government-sponsored recreation programs or camps or the parents or guardians of such child, including, but not limited to, the name, home address, telephone number, social security number, or photograph of the child; the names and locations of schools attended by such child; and the names, home addresses, and social security numbers of parents or guardians of such child is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made exempt pursuant to this paragraph may be disclosed by court order upon a showing of good cause. 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.

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information

reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(f) Medical history records and information related to health or property insurance provided to the Department of Community Affairs, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

(g)1. 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:

a. Any record of friction ridge detail;

b. Fingerprints;

c. Palm prints; and

d. Footprints.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

119.084 Copyright of data processing software created by governmental agencies; sale price and licensing fee.—

(1) As used in this section, "agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a

copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

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 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.