

073-336—September 12, 1973

PUBLIC RECORDS LAW

COMPLAINTS TO OFFICIALS OF DIVISION OF HEALTH

To: J. Edward Worton, State Attorney, Key West

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Do oral complaints which are reduced to writing that are made by private citizens to State Division of Health officials or investigators fall under the Public Records Law?

SUMMARY:

Complaints which are reduced to writing, made by private citizens to Division of Health officials or investigators, are public records under §119.01, F. S.

Chapter 119, F. S., the Public Records Law, provides that "all state, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida . . . ." Section 119.01, F. S. Public records are defined as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011, F. S.

Several sections of the Florida Statutes are concerned with inspections by the Division of Health of the Department of Health and Rehabilitative Services. These include:

Section 385.01:

The division of health of the department of health and rehabilitative services shall cause, as often as may be necessary, upon information or complaint of any person, or at the request of any town or city council, or health officer, an examination to be made of any building or buildings, and the premises connected therewith, used for board and lodging of visitors or other persons, containing ten or more rooms, such examination to be made by or under the supervision of the division of health, or by persons under its appointment, as soon as possible after such application or complaint shall have been made.

Section 514.04:

For the purpose of this chapter the division of health or its inspectors at any time may enter upon any and all parts of the premises of such bathing and swimming places to make examination and investigation to determine the sanitary condition of such places and whether the provisions of this chapter or rules and regulations of the division of health pertaining thereto are being violated. The division of health may from time to time at its discretion publish the reports of such inspections in its monthly bulletin.

Section 386.02:

The division of health of the department of health and rehabilitative services, upon request of the proper authorities, or of any three responsible resident citizens, or whenever it may seem necessary to the division of health, shall investigate the sanitary condition of any city, town or place in the state; and if, upon examination, the division of health

shall ascertain the existence of any sanitary nuisance as herein defined, it shall serve notice upon the proper party or parties to remove or abate the said nuisance or, if necessary, proceed to remove or abate the said nuisance in the manner provided in §823.01.

And §381.482:

The division and/or its inspectors may enter and inspect migrant labor camps at reasonable hours and investigate such facts, conditions, and practices or matters, as may be necessary or appropriate to determine whether any person has violated any provisions of this law or rules and regulations of the division pertaining hereto are being violated. The division may from time to time at its discretion publish the reports of such inspections in its monthly bulletin.

Based on these statutes, it would have to be said that written complaints, or complaints reduced to writing by the Division of Health officials, are received pursuant to law and in connection with the transaction of official business. It would necessarily follow that all such complaints are public records unless there is an exception therefor by law. Section 119.07(2) (b), F. S., expressly exempts from the provisions of §119.07, *supra*, certain records, none of which concern complaints to or received by the Division of Health. Section 119.07(2) (a) says that "[a]ll public records which are presently deemed by law to be confidential or which are prohibited from being inspected by the public . . . shall be exempt from the provisions of this section." A search of the Florida Statutes reveals no law providing an exception to the Public Records Law for complaints made to and received by the Division of Health under the aforecited statutes.

Therefore, I feel that such complaints made to the Division of Health are public records under §119.01, F. S.

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### PERJURY

#### PERJURY BY CONTRADICTORY STATEMENTS—ELEMENTS OF CRIME

*To: Leo C. Jones, State Attorney, Panama City*

*Prepared by: Reeves Bowen, Assistant Attorney General*

#### STATEMENT OF FACTS:

In May, 1973, a woman complained to a deputy sheriff that a named man had raped her on the date she made the complaint. The deputy sheriff was also a notary public and she knew that this was so. He informed her that it would be necessary for her to make an affidavit as to the facts before the case could be carried to court. He prepared and she executed an affidavit stating, among other things, that she had sexual intercourse with the named man as a result of his having struck and beaten her. She left the affidavit with the deputy sheriff-notary public and it was turned over to an assistant state attorney and used by the state attorney, along with other evidence, as the basis for the rape information that he filed against the named man later in May, 1973. At a subsequent trial of the named man on said rape information, she testified that he struck her and beat her but that they did not have sexual intercourse.

#### QUESTION:

Is the woman subject to prosecution under §837.021(1), F. S., for perjury by contradictory statements?