

Public records, access to citizen's police records

Number: INFORMAL

Date: January 31, 2003

Subject:
Public records, access to citizen's police records

Ms. Merry Lymn
Assistant General Counsel
Office of the General Counsel
United States Information Agency
Washington, D.C. 20547

Dear Ms. Lymn:

You have asked substantially the following question:

Under what conditions may a private nonprofit organization gain access to the police records of private citizens?

In sum:

Unless such records are active criminal investigative records or active criminal intelligence records, police records of private individuals are public records subject to inspection and copying under Ch. 119, F.S.

You state that the United States Information Agency designates nonprofit organizations to sponsor teenagers from other countries to come to the United States to study at American high schools. Under such a program, the teenager is placed with a host family for the duration of his or her visit. Your agency has received reports that some host families are inappropriate due to past criminal records or records of child abuse. As a result, your agency has considered requiring sponsoring organizations to check police records of prospective host families.

In Florida, Ch. 119, F.S., the Public Records Law, makes "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency"[1] public records subject to public disclosure, unless statutorily made confidential or exempted from the chapter's disclosure requirements.[2] Section 119.07(1)(a), F.S., provides, in pertinent part, as follows:

"Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy of a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, upon payment of the actual cost of duplication of the record."

Thus, those persons having custody of public records in Florida are required to allow such records to be inspected and copies by any person desiring to do so, unless the public record is statutorily made confidential or exempted from the disclosure requirements in Ch. 119, F.S.

Sections (d) through (k) of s. 119.07(3), F.S., contain limited exemptions for disclosure of specified law enforcement records. Pertinent to the instant situation, s. 119.07(3)(d), F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt from the disclosure requirements of Ch. 119, F.S., therefore, the record must be "active" and constitute either "criminal intelligence" or "criminal investigative" information.

Section 119.011(3)(b), F.S., defines "[c]riminal investigative information" to mean information relating to "an identifiable person or group of persons compiled by a criminal justice agency[3] 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." 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." [4]

These exceptions are limited in scope and have as their purpose to prevent the premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. [5]

Section 119.011(3)(c), F.S., provides that the following are 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 or of the victim of a crime except as provided in s. 119.07(3)(h). [6]
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. 119.07(3)(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 [prohibiting disclosure of indictment against a person not in custody, under recognizance or under arrest]."

Thus, the above cited materials, not being criminal intelligence information or criminal

investigative information, are public records subject to disclosure under Ch. 119, F.S.

This office previously has concluded that arrest and crime reports are not criminal intelligence information or criminal investigative information.[7] As a result, arrest and crime reports are public records which are subject to inspection and copying.[8]

In response to your inquiry regarding this office's participation in any suits by organizations forcing school systems to accept foreign students for attendance, I am not aware of any. I have also contacted Mr. Sydney McKenzie, General Counsel for the Florida Department of Education, who informed me that his agency had not been involved in any suits of that nature.

I trust these informal comments prepared by the Division of Opinions will assist you in this matter. Please understand that these comments were prepared by the Division of Opinions in order to be of assistance and do not represent a formal opinion of the Attorney General. Should you need information in the future, please do not hesitate to contact this office.

Sincerely,

Lagran Saunders
Assistant Attorney General

LS/twd

Enclosure

[1] Section 119.011(1), F.S. Section 119.011(2), F.S., defines "Agency" to mean

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

[2] Section 119.07, F.S.

[3] Section 119.011(4), F.S., defines "[c]riminal justice agency" to mean any law enforcement agency, court, or prosecutor, and includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigation information for the purpose of assisting such law enforcement agencies in conducting active criminal investigations or prosecutions 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.

[4] Section 119.011(3)(d)2., F.S.

[5] See *Tribune Company v. Public Records*, 493 So.2d 480 (2 D.C.A. Fla., 1986), *pet for rev. denied sub nom.*, *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

[6] Section 119.07(3)(h), F.S., exempts from disclosure of the photograph, name, address, or other fact or information which reveals the identify of the victim of the crime of sexual battery; the identify of the victim of lewd, lascivious, or indecent assault upon or in the presence of a child; or the identity of the victim of child abuse or the victim of any sexual offense.

[7] See AGO 80-96.

[8] See, e.g., AGO 86-69 (copy enclosed) (accident reports prepared by municipal police officers as provided in Ch. 316, F.S., are public records subject to inspection and copying, even if the record in question is in the custody of and maintained by another public agency; see, s. 316.066(4) as amended by Ch. 89-271, Laws of Florida, providing that accident reports shall not be released for commercial solicitation purposes).