

2-C-18 | PERSONNEL RECORDS

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under s. 119.07(1), F.S. See *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).

a. Annuity or Custodial Account Activities

Records identifying individual participants in any annuity contract or custodial account under s. 112.21, F.S. (relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies) and their personal account activities are confidential and exempt from s. 119.07(1), F.S. Section 112.21(1), F.S.

b. Applications for Employment, References, and Resumes

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers. See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and AGOs 15-10 and 77-48. Similarly, communications from third parties are subject to disclosure. See *Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982), questions answered and approved, 464 So. 2d 545 (Fla. 1985). A written employment contract is a public record. AGO 13-14.

Section 1004.098(1)(a), F.S., establishes confidentiality for personal identifying information of applicants for president of a state university or Florida College System institution. The age, race, and gender of applicants who met the minimum qualifications for the position who were considered and the personal identifying information of applicants included in the final group of applicants are no longer confidential beginning at the earlier of the date the final group of applicants is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant. Section 1004.098(1)(b), F.S.



c. Collective Bargaining

(1) Relationship of collective bargaining agreement to personnel records

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. AGO 77-48. 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." *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). Cf. *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

Similarly, a city 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 retention schedules established by the Division of Library and Information Services of the Department of State. AGO 94-75. Accord AGO 94-54.

(2) Collective bargaining work product exemption

Section 447.605(3), F.S., provides:

All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S.

The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, F.S. See *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st DCA 1980), noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the s. 447.605(3) exemption; and *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976),



ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer.

Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions which reflect the impressions, strategies and opinions of the district representative are exempt pursuant to s. 447.605(3), F.S. Inf. Op. to Fulwider, June 14, 1993.

d. Complaints Against Employees

Section 119.071(2)(k), F.S., provides that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint is confidential and exempt until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

Prior to the enactment of this statute in 2013, there was no general exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees. See e.g., AGO 04-22 (anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). Instead, the Legislature enacted exemptions pertaining to specific types of complaints and investigations. See e.g. s. 943.03(2), F.S., providing for confidentiality of Florida Department of Law Enforcement records relating to an active investigation of misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

For information on the exemptions for whistleblower, discrimination and ethics complaints directed against public



officials and employees, please refer to the discussion on pages 98-101. A discussion of exemptions addressing complaints against law enforcement officers and educators follows:

(1) Law enforcement officers and correctional officers

(a) Scope of exemption and duration of confidentiality

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. 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 within 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").

However, 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 or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges.

The term "law enforcement officer" is defined as any person, other than a chief of police, who is employed full time or part 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 under s. 30.07, F.S. Section 112.531(2), F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991). Cf. *Fraternal Order of Police v. Rutherford*, 51 So. 3d 485, 488 (Fla. 1st DCA 2010) (written complaint not necessary to trigger confidentiality afforded by s. 112.532[4] [b], F.S., as that statute provides a broader confidentiality for ongoing investigations whenever a law enforcement or correctional officer faces possible dismissal, demotion, or suspension without pay until the investigating agency "completes or abandons its investigation").

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the law enforcement agency's investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. And see AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation). But see *Florida Police Benevolent Association, Inc. v. City of Tallahassee*, 314 So. 3d 796 (Fla. 1st DCA 2021), review granted, No. 21-651 (Fla. December 21, 2021) (law enforcement officers who fatally shot suspects threatening them with deadly force were "victims" under Marsy's Law and were entitled to seek judicial relief to preclude release of identifying information in incident reports). For more



information about Marsy's Law, please see the discussion on page 121.

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. AGO 91-73. 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. *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.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that 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. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-



disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

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. 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").

(b) 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. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). And see AGO 91-73. 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. Cf. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure



since the information is exempt pursuant to s. 119.071(2)(h), F.S. Palm Beach County Police Benevolent Association v. Neumann, supra.

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. AGO 00-66. 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.

(c) 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)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. Id.

The Attorney General's Office has issued several advisory opinions interpreting this statute. 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). 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). But see Cooper v. Dillon, 403 F.



3d 1208, 1218-1219 (11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional “[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.”

(2) Public School System Employees

The complaint and material relating to the investigation of a complaint against a public school system employee are confidential until the preliminary investigation is either concluded or ceases to be active. Section 1012.31(3)(a)1., F.S. See AGO 91-75 (while exemption applies when a complaint against a district employee has been filed and an investigation against that employee ensues, it does not provide a basis for withholding documents compiled in a general investigation of school departments). Cf. *Johnson v. Deluz*, 875 So. 2d 1,3 (Fla. 4th DCA 2004) (because “legislature had no intention of permitting confidential student information to be made public,” student-identifying information must be redacted from public report of investigation of school principal); and *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student’s unredacted e-mail complaining about a college instructor’s classroom behavior qualifies as an exempt “education record”).

While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in a school district employee’s personnel file, the statute does not prevent a school board from investigating the allegations contained in an anonymous letter nor does it permit the school board to destroy the anonymous material absent compliance with statutory restrictions on destruction of public records. AGO 87-48. Moreover, the personnel file is open at all times to school board members, the superintendent, or the principal, or their respective designees in the exercise of their duties, and to law enforcement personnel in the conduct of a lawful



criminal investigation. Section 1012.31(3)(b) and (c), F.S.

(3) State university and Florida College System institution employees

For information on statutory exemptions for complaints filed against state university or Florida College System institution (formerly community college) employees, please refer to the discussion of employee evaluations on pages 141.

e. Conditions for Inspection of Personnel Records

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Ch. 119, F.S.). And see *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002) ("only the custodian of such records can assert any applicable exemption; not the employee").

Thus, while an agency is not precluded from notifying an employee that a request has been made to inspect his or her personnel records, in the absence of express legislative authority, the production of personnel records may not be delayed in order to allow the employee to be notified or present during the inspection of the public records relating to that employee. Compare s. 1012.31(3)(a)3., F.S., providing that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified by certified mail or personal delivery as provided in s. 1012.31(2)(c), F.S.

(1) Privacy Issues

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. 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). See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981). But see *Fadjo v. Coon*, 633 F.2d 1172, 1175n.3 (5th Cir. 1981), noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy."

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. See e.g., *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure).

Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *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) (public employer has an affirmative duty to inform a discharged employee of his right to seek a post-termination name-clearing hearing). Cf. *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001) (failure to provide name-clearing hearing to employee who alleged that he was denied a promotion due to stigmatizing information in his personnel file does not violate the employee's due process rights, because "in this circuit a 'discharge or more' is required").



(2) Sealed Records

An agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. Nor may an agency, absent a statutory exemption for such records, agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file for the purpose of removing such records from public access. AGO 94-54. Accord AGO 11-19 (superintendent's failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). And see AGO 15-10 (agency may not "seal" job applications or request that they be submitted as "sealed" records to foreclose public access).

f. Criminal History Information

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990.

In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from s. 119.07(1), F.S., or use of the information is restricted. See, e.g., s. 110.1127(2)(d) and (e), F.S. (agency positions designated or specified as provided in s. 110.1127, F.S.); s. 1002.36(7) (d) and (e), F.S. (School for the Deaf and the Blind); and s. 39.821(1) F.S. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history 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 under Florida's Public Records Act. AGO 99-01. However, information developed by the school district from further inquiry into references in the federal criminal



history record information is a public record which should be included in a school district employee's personnel file. Id.

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. AGO 94-49.

g. 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 shall be confidential and exempt. Section 112.215(7), F.S.

h. Direct Deposit

Direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1), F.S. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), F.S.

i. Drug Test Results

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with s. 112.0455, F.S., the Drug-Free Workplace Act, are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), F.S. See also s. 112.0455(8)(l) and (t), F.S.

While the provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, ss. 440.101-440.102, F.S., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. See AGO 98-38. Section 440.102(8), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program implemented pursuant to Ch. 440, F.S. AGO 13-19. Cf. AGO 94-51 (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, F.S.); and Inf. Op. to McCormack, May 13, 1997 (s.

440.102[8], F.S., applies to public employees and not to drug test results of public assistance applicants). And see s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the reemployment assistance law.

In AGO 96-58, the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to s. 401.265(2), F.S., requiring a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to ss. 440.101-440.102, F.S.

j. 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. See ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

k. Employment Search or Consultant Records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, 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. 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). Cf. s. 1004.098(1), F.S., discussed on page 134 establishing an exemption for personal identifying information of applicants for president of a state university or Florida College institution.



1. Evaluations of Employee Performance

Evaluations of public employee performance are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977):

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.

However, there are statutory restrictions on access to evaluations of employee performance for public school system employees. Section 1012.31(3)(a), F.S. Similarly, there are exemptions for evaluations contained in limited-access records prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; prescribed by the State Board of Education for Florida College System institution employees, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S.

A discussion of each of these exemptions follows:

(1) Hospital Employees

Section 395.3025(9), F.S., authorizes hospitals to prescribe the content of limited-access employee records which are not available for disclosure for 5 years after such designation. Such records are limited to evaluations of employee performance, including records forming the basis for evaluation and subsequent actions. See *Times Publishing Company v. Tampa General Hospital*, No. 93-03362 (Fla. 13th Cir. Ct. May 27, 1993), available online in the Cases database at the open government site at myfloridalegal.com (s. 395.3025[9] exemption does not apply to list of terminated hospital employees; hospital ordered to allow newspaper to inspect list and personnel files of those persons named in list after "limited-access" documents have been removed).

(2) Public School Employees

Employee evaluations of public school system employees prepared pursuant to cited statutes are confidential

until the end of the school year immediately following the school year during which the evaluation was made; however, no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S. However, the exemption applies only to the "employee evaluation." See *Morris Publishing Group, LLC v. Department of Education*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013), review denied, 157 So. 3d 1046 (Fla. 2014) ("While section 1012.31[3] [a]2 provides that the evaluation of a public school teacher is not subject to disclosure under the public records law, it does not follow that any information or data used to prepare the evaluation is likewise exempt from disclosure").

Moreover, information obtained from evaluation forms circulated by the local teacher's union to its members that is provided unsolicited to the superintendent is not exempt under this statute. AGO 94-94. In addition, written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23. Cf. AGO 11-19, concluding that a superintendent's failure to comply with a statute requiring that a performance evaluation be discussed with an employee before it is filed in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed.

(3) State University and Florida College System Institution Employees

Limited-access records maintained by a state university on its employees are confidential and exempt from s. 119.07(1), F.S., and may be released only upon authorization in writing from the employee or upon court order. Without such authorization, access to the records is limited to university personnel as specified in the statute. Section 1012.91, F.S.

"Limited-access records" are limited to: information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee; records relating to an investigation of employee misconduct which records are confidential until



the conclusion of the investigation or the investigation ceases to be active as defined in the exemption; and records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made. Section 1012.91(1), F.S.

For sexual harassment investigations of university personnel, portions of records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Section 1012.91(2), F.S. Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records. Section 1012.91(4), F.S.

Regarding Florida College System institution employees, s. 1012.81, F.S., states that rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such records are limited to information reflecting academic evaluations of employee performance and certain disciplinary and grievance records as described in the exemption. Limited access records are confidential and exempt and may not be released except as authorized in the exemption. Cf. *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about an instructor's classroom behavior qualifies as an exempt "education record").

m. 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. 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"). And see *Rush v. High Springs*, 82 So. 3d 1108 (Fla. 1st DCA 2012) (exemption applies to questions and answers contained in preemployment polygraph examinations).

The exemption from disclosure in s. 119.071(1)(a), F.S., applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners. See *Dickerson v. Hayes*, supra at 837. Compare s. 455.229(1), F.S., providing confidentiality for "examination questions, answers, papers, grades, and grading keys" used in licensing examinations administered by the Department of Business and Professional Regulation.

A person who has taken an examination has the right to review his or her own completed examination. 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. 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. AGO 81-12.

n. Home Addresses, Telephone Numbers and Other Personal Information

In the absence of statutory exemption, home addresses, telephone numbers, photographs, and dates of birth of public officers and employees are not exempt from disclosure. See AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files). And see *United Teachers of Dade v. School Board of Dade County*, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992), available online in the Cases database at the open government site at myfloridalegal.com (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information). Cf. AGO 85-03 (list containing names and

addresses of subscribers to state magazine is a public record).

(1) Listing of Public Officers and Employees Covered by Exemptions

The home addresses, telephone numbers, and other specified personal information pertaining to certain public officers and employees and their spouses and children have been exempted in ss. 119.071(4)(d) and 119.071(5)(i) F.S. The term "home address" for purposes of s. 119.071(4)(d), F.S., means "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address." Section 119.071(4)(d)1.a., F.S.

For purposes of s. 119.071(4)(d), F.S., the term "telephone numbers" includes "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." Section 119.071(4)(d)1.b., F.S.

(a) Abuse investigators for Department of Children and Families and Department of Health

a. Scope of exemption: Active or former personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft or other criminal activities; and active or former personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of

the spouses and children of such personnel;
and the names and locations of schools and day
care facilities attended by the children of
such personnel

d. Statutory reference: Section
119.071(4) (d)2.a., F.S.

(b) Child advocacy personnel and child protection
team members

a. Scope of exemption: Current or former
directors, managers, supervisors, and
clinical employees of a child advocacy center
that meets the standards of s. 39.3035(2) and
fulfills the screening requirements of s.
39.3035(3) and the members of a Child
Protection Team as described in s. 39.303
whose duties include supporting the
investigation of child abuse or sexual abuse,
child abandonment, child neglect, and child
exploitation or to provide services as part of
a multidisciplinary case review team.

b. Information exempted: Home addresses,
telephone numbers, dates of birth, and
photographs

c. Family information exempted: Names, home
addresses, telephone numbers, photographs,
dates of birth and places of employment of the
spouses and children of such personnel; and
the names and locations of schools and day
care facilities attended by the children of
such personnel

d. Statutory reference: Section
119.071(4) (d)2.t., F.S.

(c) Code enforcement officers

a. Scope of exemption: Current or former code
enforcement officers

b. Information exempted: Home addresses,
telephone numbers, dates of birth, and
photographs



c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.i., F.S.

(d) County addiction facility personnel

a. Scope of exemption: Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility. The term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401, and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26)

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.s., F.S.

(e) County tax collectors

a. Scope of exemption: County tax collectors

b. Information exempted: Home addresses, telephone numbers, and dates of birth

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and



locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.n., F.S.

(f) Domestic violence advocates

a. Scope of exemption: Current or former staff and domestic violence advocates, as defined in s. 90.5036(1) (b), of domestic violence centers certified by the Department of Children and Families under chapter 39

b. Information exempted: Home addresses, telephone numbers, places of employment, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs 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

d. Statutory reference: Section 119.071(4) (d)2.u., F.S.

(g) Domestic violence and other specified crime victims

Please refer to the discussion on page 78.

(h) Emergency medical technicians or paramedics

a. Scope of exemption: Current or former emergency medical technicians or paramedics certified under Ch. 401, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and

locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.q., F.S.

(i) Firefighters

a. Scope of exemption: Current or former firefighters certified in compliance with s. 633.408, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of spouses and children of such firefighters; and the names and locations of the schools and day care facilities attended by the children of the firefighters

d. Statutory reference: Section 119.071(4) (d)2.d., F.S.

(j) Guardians ad litem

a. Scope of exemption: Current or former guardians ad litem, as defined in s. 39.820, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons

d. Statutory reference: Section 119.071(4) (d)2.j., F.S.

(k) Hospital employees



Please refer to the discussion on pages 96-97.

- (l) Human resource managers (local governments)
 - a. Scope of exemption: 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
 - b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
 - d. Statutory reference: Section 119.071(4) (d)2.h., F.S.
- (m) Impaired practitioner consultants
 - a. Scope of exemption: Current or former impaired practitioner consultants retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession
 - b. Information exempted: Home addresses, telephone numbers dates of birth, and photographs
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of



schools and day care facilities attended by the children of such consultants or employees

d. Statutory reference: Section 119.071(4) (d)2.p., F.S.

(n) Inspectors general and internal auditors performing specified duties

a. Scope of exemption: Current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.r., F.S.

(o) Investigators and inspectors of the Department of Business and Professional Regulation

a. Scope of exemption: Current or former investigators or inspectors of the Department of Business and Professional Regulation

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: 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



d. Statutory reference: Section 119.071(4) (d)2.m., F.S.

(p) Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties

a. Scope of exemption: Current or former nonsworn investigative personnel of the Department of Financial Services and Office of Financial Regulation whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel.

d. Statutory reference: Section 119.071(4) (d)2.b., and c., F.S.

(q) Judges, magistrates, and hearing officers (state)

I. Administrative law judges, magistrates, and child support hearing officers

a. Scope of exemption: General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d)2.g., F.S.

II. Court justices and judges

a. Scope of exemption: Current or former Justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of such justices and judges

d. Statutory reference: Section 119.071(4) (d)2.e., F.S.

(r) Juvenile Justice juvenile probation and detention officers and counselors

a. Scope of exemption: Current or former juvenile probation officers and supervisors, detention superintendents and assistant superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors, supervisors, and administrators, human services counselor administrators, rehabilitation therapists and social services counselors of the Department of Juvenile Justice



b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d) 2.k., F.S.

(s) Law enforcement and correctional personnel

a. Scope of exemption: Active or former sworn law enforcement personnel or active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4) (d) 2.a., F.S.

(t) Personnel of the Department of Health with specified duties

a. Scope of exemption: Current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or



health care facilities licensed by the Department of Health

b. Information exempted: Homes addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.o., F.S. See also s. 119.071(4)(d)2.a., F.S. (child abuse or neglect investigators).

(u) Prosecutors and judges (federal)

a. Scope of exemption: Current or former United States attorneys, assistant United States attorneys, judges of the United States Courts of Appeal, United States district judges or United States magistrates if the individual submits to the agency having custody of such information a written request to exempt such information from public disclosure as well as a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public

b. Information exempted: Home address, telephone number and photograph

c. Family information exempted: Home address, telephone number, photograph, and place of employment of the spouse or child; and the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate

d. Statutory reference: Section 119.071(5)(i), F.S.

(v) Prosecutors (state)



a. Scope of exemption: Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.f., F.S.

(w) Public defenders and other specified counsel

a. Scope of exemption: Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.l., F.S.

(x) Public guardians

a. Scope of exemption: Current or former public guardians and employees with fiduciary responsibility, as that term is defined in the exemption, who submit to the custodial agency



a written request for maintenance of the exemption. The term "employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 744.21031, F.S.

(y) Revenue collection and enforcement or child support enforcement

a. Scope of exemption: Active or former personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.



(2) Authority to Release Protected Information

The purpose of the s. 119.071(4)(d), F.S., exemption is to protect the safety of the enumerated individuals and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 10-37. And see AGOs 90-50 and 96-57. The statute makes these records exempt from mandatory disclosure requirements, not confidential; thus, an agency is not prohibited from disclosing the information in all circumstances. AGO 10-37.

However, in determining whether to disclose the information, the agency should consider the underlying purpose of the statute, i.e., safety of the listed individuals and their families. AGO 90-50. See also AGO 08-24. Cf. AGO 90-50, noting that the exemption does not prohibit an agency from "access to, and maintaining information on, its employees, including their names and addresses."

In other words, a police department, in deciding whether to publicly release photographs of law enforcement personnel, should determine whether there is a statutory or substantial policy need for disclosure. AGO 07-21. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)2. *Id.* For example, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. AGO 90-50.

Similarly, in AGO 08-24, the Attorney General's Office noted that the home addresses and other protected personal information of the spouses of law enforcement officers who are employed by the school board are exempt from disclosure under s. 119.071(4)(d)2., F.S., and therefore, the school board was not required to report such information to the certified bargaining representative. And see *Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs



of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

By contrast, information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S. Inf. Op. to Reese, April 25, 1989. Similarly, a police and firefighter pension board may release exempt employee information pursuant to a confidentiality agreement for use by a vendor that has contracted with the board to conduct cybersecurity testing of the board's electronic data storage systems. AGO 19-08.

A 2017 Attorney General Opinion advised that a property appraiser may disclose the address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S. AGO 17-05. The code inspector's statutory duty to notify an alleged code violator of a violation warrants use of an otherwise exempt address for the limited purpose of providing such notice and does not authorize further disclosure of the address. Id. Cf., s. 119.071(4)(d)7., F.S.(2021), brought into the statutes by s. 3, Ch. 21-215, Laws of Florida, providing that exempt information "may be disclosed pursuant to s. 28.2221[relating to exempt information in the Official Records] to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar."

The s. 119.071(4)(d)2., F.S., exemption applies to public agencies, not private entities unless the private entity is acting on behalf of a public agency. Inf. Op. to Gomez, Nov. 3, 2008. Cf. s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or

with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. But see *Brayshaw v. City of Tallahassee, Fla.*, 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

(3) Records held by agencies that are not the employer of the designated officers or employees

An agency that is the custodian of personal information specified in s. 119.071(4)(d)2., F.S., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)3., F.S. See AGOs 97-67 (Official Records maintained by clerk of court), 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and 04-20 (property appraiser). And see AGO 05-38 (request made to the property appraiser for an exemption from disclosure of personal information would follow the property appraiser's records when they are relayed to the clerk of courts carrying out duties for the Value Adjustment Board).

The request must be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status. Section 119.071(4)(d)3., F.S.

The provisions of s. 119.071(4)(d), F.S., should not be read "to impose a burden on employers to know the past law enforcement employment status of employees who may work for them in other capacities." AGO 10-37. Thus, a former law enforcement officer from one municipality who is currently employed by another municipality in a non-law enforcement capacity must make a written request pursuant to s. 119.071(4)(d)3., F.S., that his or her personal information be maintained as exempt by the current employer. *Id.*



A request made pursuant to s. 119.071(4)(d)3., F.S., for maintenance of exempt information in court records or the official records must specify the document type, identification number, and page number of the court record or official record that contains the exempt information. Section 119.0714(2)(f) and (3)(f), F.S.

A covered officer or employee or other specified person may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information. Section 119.071(4)(d)5., F.S. And see s. 119.071(4)(d)4., F.S., specifying duties of property appraisers and county tax collectors with respect to a request for maintenance of exempt status; s. 119.071(4)(d)8., F.S., providing that the exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location; and s. 119.071(4)(d)9., F.S., providing procedures for a request for release of protected decedent's removed information.

(4) Application of exemption to:

(a) Telephone Numbers of Cellular Telephones Issued by Agencies

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. Inf. Op. to Laquidara, July 17, 2003. In 2012, the Legislature amended s. 119.071(4)(d), F.S., to define the term "telephone numbers" as used in the exemption to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." See s. 119.071(4)(d)1.b., F.S. As originally introduced, the 2012 legislation would have also included "telephone numbers associated with agency cellular telephones" within

the definition of "telephone numbers." See HB 629, filed November 10, 2011. However, this proposed language was removed from the original bill during the legislative process.

(b) List of names of designated officers and employees

While s. 119.071(4)(d)2., F.S., exempts home addresses and other personal information of the designated public officers and employees, it does not exempt the names of these officers and employees from public disclosure (although typically the names of the spouses and children are exempt). See, e.g., s. 119.071(4)(d)2.g., F.S. (names of spouses and children of code enforcement officers are exempt).

Accordingly, the Attorney General's Office advised that if the property appraiser maintains a list of the names of officers and employees who have requested the exemption of their home addresses as authorized by s. 119.071(4)(d)3., F.S., this list is not exempt. AGO 08-29. Cf. s. 119.071(4)(d)4.a., F.S. (2021), relating to removal of the name of the individual who has requested exempt status and the instrument number or Official Records information identifying the property from publicly available records maintained by the tax collector or property appraiser.

However, as noted elsewhere in this manual, an agency is not required to create or reformat records in order to comply with a request under Ch. 119; the duty of the public records custodian is to provide access to existing records. See the discussion in pages 167-169.



(c) Prior home addresses

Section 119.071(4)(d)2., F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. AGO 10-37.

(d) Maps showing physical location of homes

A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written exemption request from the officer. AGO 04-20. See also the definition of the term "home address" as defined in s. 119.071(4)(d)1.a., F.S.

(e) Home addresses of persons who are not the owner of the property

The exemption applies to the home addresses, telephone numbers, and other personal information relating to the specified individuals "without regard to whether or not they own the real property at which they reside." AGO 14-07.

(f) Booking photographs

Section 119.071(4)(d), F.S., exempts the photograph of a current or former law enforcement officer, whether held by the employing agency or by a non-employing agency which has received a written request to maintain the exempt status of the record. Inf. Op. to Amunds, June 8, 2012. Thus, the agency should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. Id. In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption, i.e., the safety of law enforcement officers and their families. Id. See also AGOs 90-50 and 07-21. Cf. AGO 94-90 (statute did not preclude release of



booking photograph of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071(4)(c), F.S.).

o. Medical Information and Health Insurance Participant Information

(1) Medical Information and Medical Claims Records

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. Section 119.071(4)(b)1., F.S. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order. *Id.* 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"). Cf. *Delaurentos v. Peguero*, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (s. 119.071[4][b]1., "simply provides an exemption in the event that a citizen makes a public records request for medical records;" but does not "create a privilege which would insulate such records from discovery in litigation").

Public school system employee medical records, including psychiatric and psychological records, are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

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. Section 760.50(5), F.S.

Patient medical records and medical claims records of current or former employees and eligible dependents enrolled in group insurance plans of specified governmental entities are confidential and exempt from s. 119.07(1), F.S.; such records shall not be furnished to any person other than the employee or the employee's legal representative, except as authorized in the

subsection. Sections 110.123(10) (state employees), 112.08(7) (county or municipal employees), and 112.08(8) (water management district employees), F.S. See AGO 91-88, citing to *News-Press Company, Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987), stating that the exemption applies broadly and is not limited solely to medical records filed in conjunction with an employee's participation in a group insurance plan; rather, the exemption applies to all medical records relating to employees enrolled in a group insurance plan. And see AGOs 01-33 (confidentiality of patient records at medical clinic owned and operated by city for the use and benefit of its employees); 94-78 (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection), and 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

(2) Health Insurance Participant Information

While "information relating to an insurance program participant's medical condition is protected from disclosure... there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants." Inf. Op. to Dockery, November 10, 2008.

Subsequent to the issuance of this opinion, the Legislature enacted an exemption for personal identifying information of a dependent child of a current or former officer or employee of an agency, whose dependent child (as defined in s. 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. However, while personal identifying information relating to the dependent child's participation in an agency's group insurance plan is now confidential, personal identifying information relating to the current or former officer's or employee's participation in such plan is subject to disclosure. Cf. s. 110.12301(3), F.S., providing confidentiality for records collected for purposes of dependent eligibility verification services conducted



for the state group insurance program and held by the Department of Management Services.

p. Payroll Deduction Records

There is no general exemption from disclosure that applies to agency payroll deduction records. However, public school system employee payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. See AGO 09-11 (tax information [such as Federal Withholding Tax Deduction, FICA Tax Deduction and the Medicare Tax Deduction] of a public school system employee would appear to constitute payroll deduction records and would be confidential and exempt from disclosure pursuant to s. 1012.31[3][a]4., F.S.).

q. Retiree Lists

The names and addresses of retirees are confidential and exempt from s. 119.07(1), F.S., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled or list form except to public agencies engaged in official business, to collective bargaining agents or to retiree organizations for official business use. Section 121.031(5), F.S. "Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired." Id. Cf. s. 121.4501(19), F.S. (personal identifying information of members in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt).

Section 121.021(60), F.S., defines the term "retiree" to mean "a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member." Accordingly, the s. 121.031(5) exemption does not apply to employees who are participants in the Deferred Retirement Option Program (DROP); DROP participants "are not retirees since they have not terminated their employment." *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County*, No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007), available online in the Cases database at the open government site at myfloridalegal.com.



r. Salary Records

Salary and other information relating to compensation is subject to disclosure. *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), available online in the Cases database at the open government site at myfloridalegal.com. Accord AGOs 80-92 and 73-30.

s. Travel Records

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s. 119.071[5][b], F.S.) or social security numbers (ss. 119.071[4] a] and [5][a]F.S). See *Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980). See also AGO 72-356 (travel itineraries and plane reservations for use of state aircraft are public records). Cf. *Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2019), finding that premature disclosure of prospective information relating to the Governor's detailed schedule and travel plans would reveal surveillance techniques, procedures, or personnel which are exempt pursuant to s. 119.071(2)(d), F.S.

t. Undercover Personnel of Criminal Justice Agencies

Please refer to the discussion of this topic on page 120.

(Florida Office of the Attorney General // © March 9, 2023)

Footnotes

Note: In AGO 96-57, the Attorney General's Office concluded that this exemption should be construed as including personnel whose duties include both revenue collection and enforcement, as opposed to those personnel whose duties include only revenue collection or only revenue enforcement.

