

## Public Records – Law Enforcement Records

Under Florida law, any record made or received in connection with the transaction of official business is a public record subject to disclosure, unless there is a specific statutory exemption making that record, or the information contained therein, confidential or exempt.

Many of the questions posed to the Attorney General's Office involve access to law enforcement records. A significant exemption for law enforcement records is for active criminal investigative information and criminal intelligence information held by a criminal justice agency.

In order to qualify for the exemption, the information must fall within the statutory definition of "criminal intelligence information" or "criminal investigative information" and it must be "active."

"Criminal intelligence information" means information concerning "an identifiable person or group of persons which is collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." 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."

"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." 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."

The following are not criminal intelligence or investigative information:

The time, date, location and nature of a reported crime;

The time, date and location of the incident and of the arrest;

The crime charged;

The name, sex, age, and address of a person arrested, although other statutes may provide for the confidentiality of such information such as juvenile records; and

The name, sex, age and address of the victim of a crime, although certain identifying information relating to the victims of certain enumerated sexual offenses is confidential.

Also excluded from the definition of criminal investigative or intelligence information are charging documents and indictments except in situations where the defendant is not in custody, under recognizance or under arrest; and documents required to be given to the person arrested,

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 would jeopardize the safety of that victim or witness; or if the release of the documents would impair the ability of the state attorney to locate or prosecute a codefendant.

The active criminal investigative and intelligence information exemption does not prohibit the disclosure of the information by the criminal justice agency; the exemption only removes the information from the mandatory inspection requirements in Chapter 119. Moreover, the exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because such records are transferred to a law enforcement agency.

Juvenile records have traditionally been considered confidential and are treated differently from other records in the criminal justice system. As a general rule, access to records of juvenile offenders is limited. However, the name, photograph, address and crime or arrest report of a juvenile is open if:

The juvenile has been taken into custody for a crime that would be a felony if committed by an adult;

The juvenile has been found by a court to have committed three or more violations of law which would be misdemeanors if committed by an adult.

The juvenile has been transferred to the adult system, or

The juvenile has been taken into custody for a forcible felony or commission of felonies involving firearms.

Law enforcement officers are authorized by statute to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime without regard to whether those juvenile offenders are suspects in the crime under investigation. Records relating to juvenile traffic violations are open to inspection to the same extent as adult traffic violations.

Information revealing the substance of a confession by a person arrested is exempt from disclosure until such time as the case is adjudicated, dismissed or otherwise resolved. Confidential informants or sources are also exempt from disclosure regardless of whether such informants or sources may have been identified by other sources. Information revealing surveillance techniques or personnel is confidential.

Without an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. However, there are some exemptions which apply specifically to law enforcement personnel records. Chapter 112 of the Florida Statutes provides that complaints filed against law enforcement officers and correctional officers, as well as 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.

Chapter 112, however, 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 under Chapter 112. If the officer resigns prior to the agency's completion of its investigation, the exemption no longer applies, even if the agency is still actively investigating the complaint.

This exemption is of limited duration. A complaint is presumed to be inactive, and therefore subject to disclosure, if no finding is made within 45 days after the complaint is filed. While the officer who is the subject of the complaint may have access to complaint and investigative information prior to the time the information becomes available for public inspection, the officer does not have the right to information exempted from disclosure by another statute, such as active criminal investigative information.

A number of records pertaining to current or former law enforcement officers are exempt from public disclosure. For example, the home addresses, telephone numbers, social security numbers and photographs of active or former and current law enforcement personnel, including correctional and correctional probation officers, are exempt. Additionally, the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; as well as the names and locations of schools and day care facilities attended by the children of such personnel are also exempted. The same exemptions apply to current or former prosecutors.

There are a number of other exemptions relating to law enforcement agency records that have not been addressed here. If you have questions about the Sunshine or Public Records laws in Florida, feel free to visit us on our website, [www.myflsunshine.com](http://www.myflsunshine.com), or to call us at 850-245-0197. Open government isn't just good government- it's the public's right.