

Law Enforcement Officers' Bill of Rights

Number: INFORMAL

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The Honorable Frank Farkas
Representative, District 52
1510 4th Street North
St. Petersburg, Florida 33704

Dear Representative Farkas:

You ask whether the Law Enforcement Officers' Bill of Rights prohibits the release of an officer's name when the officer is under investigation and the details of the investigation are kept confidential.

Section 112.533, Florida Statutes, provides for the receipt and processing of complaints against law enforcement or correctional officers.[1] The law enforcement agency must put into operation a system for the receipt, investigation, and determination of complaints received. In Attorney General Opinion 93-61, this office stated that the provisions of this statute appeared to apply to complaints filed with the officer's employing agency by any person, whether within or outside of the agency.

Section 112.533(2)(a), Florida Statutes, provides for the confidentiality of the complaint and all information obtained pursuant to the investigation of the complaint by the agency. This confidentiality remains in effect until the investigation ceases to be active or until the officer who is the subject of the complaint is provided written notice that that agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or file charges.[2]

Section 112.533(4), Florida Statutes (1998 Supplement), 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, *including*, but not limited to, *the identity of the officer under investigation*," before such complaint, document, action, or proceeding becomes a public record.[3] (e.s.) The statute, however, does not limit the officer's ability to gain access to information under section 112.533(2)(a), Florida Statutes. In 1998, the Legislature specifically amended section 112.533(4) to provide:

"Additionally, a sheriff, police chief, or other head of a law enforcement agency, or his or her designee, is not precluded by this section from acknowledging the existence of a complaint and the fact that an investigation is underway."

The above language has not been the subject of appellate court interpretation. However, depending on what is already known by the public about a case, the above provision could, for all practical purposes, result in the identification of the officer. Moreover, information regarding the identity of the officer might be obtained from other records, for example if an officer was

involved in an incident for which an incident report or an arrest report is filed, and a complaint about the officer's action is later filed with the law enforcement agency. The incident report or arrest report would not be closed pursuant to section 112.533, Florida Statutes, since it was not the complaint nor was it derived from the investigation of the complaint.

I trust that the above advisory comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 112.531(1), Fla. Stat., which defines "Law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07.

[2] Notwithstanding the foregoing provisions, access is given to the officer who is the subject of the complaint, see s. 112.533(2)(a), Fla. Stat., and to law enforcement agencies, correctional agencies, and state attorneys in the conduct of a lawful criminal investigation, see s. 112.533(2)(c), Fla. Stat.

[3] Note that a predecessor to s. 112.533(4), Fla. Stat. (1998 Supp.) was declared unconstitutional by the federal district court in *Rantel v. City of Fort Lauderdale*, No. 88-6676-Civ (S.D. Fla. 1990). *Cf. Doe v. Gonzalez*, 723 F.Supp. 690 (S.D. Fla. 1988), *affirmed*, 886 F. 2d 1323 (11th Cir. 1989), stating that s. 112.317(6), Fla. Stat., which made it a misdemeanor to disclose the existence of a complaint filed with the Ethics Commission was unconstitutional.