

From: Dave Byron <dbyron@co.volusia.fl.us>
To: VolusiaExposed.Com <VolusiaExposed@cfl.rr.com>
Subject: Re: Officer misconduct record releases
Date: Fri, 11 Nov 2011 14:08:36 -0500

Attached is the AG opinion to which you refer. This is guidepost the county will be following. In essence, an internal affairs report becomes public at the time the county takes final disciplinary action. You will be receiving a communication from Gary Davidson of the SO in which Mr. Davidson will explain his department's policy always has been consistent with this AG opinion. The rest of county government will do the same. -- Dave Byron, county spokesman

>>> "VolusiaExposed.Com" <VolusiaExposed@cfl.rr.com> 11/8/2011 7:42 PM >>>

Mr. Dave Byron:
Volusia County Information Officer

Dear Mr. Byron (and others):

VolusiaExposed.Com is currently working on an article regarding Volusia County's newest policy of releasing public records, regarding misconduct investigations against law enforcement officers. We have some concerns regarding this new policy, and we would appreciate any clarity that you can bring to this matter.

We refer you to a recent Dayton Beach News Journal article in which you were apparently quoted on this new policy (Byron).
<http://www.news-journalonline.com/news/local/east-volusia/2011/11/02/volusia-adopts-cautious-approach-on-information-about-employee-investigations.html>

VolusiaExposed recently made a public records request for a copy of the particular Attorney General Opinion, the county was using, in order to modify the county's procedure of releasing records. These types of records (LEO misconduct investigations) have a very narrowly defined *exemptions from release*, per the Florida public records laws, found in Florida Statutes Chapter 119. These narrowly defined exemptions are defined in Florida Statutes 112.533(2)(a).
<http://www.volusiaexposed.com/vcdppia/prria/fs1125332a.pdf>

F.S. 112.533 states, that these misconduct records are not releasable as

public records until the agency has concluded the investigation, with a finding to either proceed or not proceed with disciplinary action, or to file charges. In response to our request, we received a copy of the below email from Assistant County Attorney Nancye Jones to several ranking county administrators.
<http://www.volusiaexposed.com/vcdppia/prria/jonesemail.pdf>

In the above attached email, Attorney Jones articulates her belief that records involving officer misconduct do NOT become available as public records until after the FINAL letter of discipline is delivered and not the Notice of Intent letter. Attorney Jones supports this belief by attaching a copy of Attorney General Opinion 95-59.
<http://www.volusiaexposed.com/vcdppia/prria/ago9559.pdf>

We have closely reviewed AGO 95-59. It is our opinion that, then Attorney General Butterworth made a very strict and precise opinion of whether the Cape Coral Police Department's pre-disciplinary hearing would be inclusive into the exemptions of public records release, as granted under F.S. 112.533(2)(a). In fact, Attorney General Butterworth quoted from Cape Coral PD's General Order B-30 in support of his opinion.

Mr. Byron, does Volusia County have a *General Order B-30* or anything similar? Does Volusia County have a *pre-disciplinary hearing* procedure in place for law enforcement officers? Please accept this email, as a public record request for any general orders or policies that Volusia County has in place, that authorizes and defines its *pre-disciplinary hearing* procedure.

Should your position be that the County Personnel Board is this *pre-disciplinary hearing* procedure, then we request some clarity to the following questions and concerns.

It is our understanding, that the Volusia County Personnel Board is defined within the County Charter, under Section 86-485 (Appeals / Personnel Board) of the County Merit Rules.

<http://www.volusiaexposed.com/vcdppia/prria/mrpages7782.pdf>

Further, it is our understanding that the County's disciplinary procedures are defined in Section 86-455 of the County Merit Rules.

<http://www.volusiaexposed.com/vcdppia/prria/mrpages7073.pdf>

According to Section 86-485, the County Personnel Board is by the county's own definition an *appeals* board. The Personnel Board hears appeals of *adverse* disciplinary actions (as defined in County Merit Rules) * . Per our understanding of the County Personnel

Board, it's is a post disciplinary hearing board, rather than the Cape Coral PD pre-disciplinary board as outlined in AGO 95-59.

According to Section 86-455 * Disciplinary Procedures * There must be a concurrence between the appointing authority (department director, sheriff, etc), county legal and the county personnel director prior to adverse action being applied to an employee. However, regarding the Personnel Board, it is not even mandated that the *appointing authority* even attend the hearing. (86-485(f)(4)). Further, the Personnel Board recommendation is not even sent to the *appointing authority*, but rather to the County Manager, who is the final decision maker in this appellat process.

If the *appointing authority* is not even required to attend the personnel board, and is not the receiptant of the personnel board recommendation, then how did the personnel board assist the *appointing authority* in making his / her conclusion that disciplinary action was appropriate? In our opinion, this would only go to support that the Volusia County Personnel Board is a post , rather than a pre-disciplinary process.

According to County Merit Rules and as documented in the Volusia County Handbook, probationary employees have no right of appeal to the personnel board regarding adverse actions. Would probationary law enforcement officers be afforded a different system or procedure to receipt and investigation allegations of misconduct against them? (system of investigation is required as per F.S. 112.533(1))

<http://www.volusiaexposed.com/vcdppia/prria/hbpage41.pdf>

<http://www.volusiaexposed.com/vcdppia/prria/fs1125331.pdf>

Has Volusia County developed a different system to investigation probationary law enforcement officers? If so, then at what part of the process will these probationary officers' records become available as public records?

According to Section 86-485 * all county personnel board hearings are open to public participation, as defined in Florida Statute 286.011. With this apparent new change in policy, that records surrounding law enforcement investigation are confidential until a FINAL decision is made, will these personnel board hearings on law enforcement officers now be closed to the public?

Are any law enforcement union contracts affected by this policy modification?

VolusiaExposed anticipates publishing our article on or near November 20, 2011 * therefore any clarification or responses you wish to provide us must be received by 5PM on November 17, 2011. Please use the below email address as our point of contact.

We look forward to your response.

Thank You
VolusiaExposed.Com
volusiaexposed@cfl.rr.com

Bcc - several

* 86-485 *Adverse actions are those actions TAKEN by a department director for disciplinary reasons which result in an employee involuntarily suffering a loss in pay. Such actions include reduction in salary rate, demotion, suspension and dismissal. Placement of an employee on leave without pay status (or a charge against annual leave in lieu of suspension) as a disciplinary measure may also be considered an adverse action.*