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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."<sup>78</sup>

Similarly, unless authorized by law, a city may not agree through collective bargaining to remove references to the initial proposed disciplinary action in an employee's personnel file when a settlement agreement results in a reduced disciplinary action.<sup>79</sup>

## **5. Statutory exemptions applicable to law enforcement personnel**

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees.<sup>80</sup> However, there are some exemptions which apply specifically to law enforcement personnel records.

### **a. Complaints filed against law enforcement officers**

#### **(1) Scope of exemption and duration of confidentiality**

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obtained pursuant to the agency's investigation of the complaint, are confidential *until the investigation is no longer active or until the agency head or his designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the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.*

Section 112.531(1), F.S., defines "law enforcement officer" for purposes of the statute 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

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pursuant to s. 30.07, F.S.<sup>81</sup>

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption.<sup>82</sup> The complaint must be in writing in order for the confidentiality provisions of s. 112.533(2)(a), F.S., to apply.<sup>83</sup> Section 112.532(4)(b), F.S., however, also provides for confidentiality during an ongoing disciplinary investigation “[n]ot withstanding s. 112.533(2),” when a law enforcement officer or correctional officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action. The First District Court of Appeal recently concluded that the confidentiality rights afforded by this section are broader than those provided by s. 112.533(2)(a), F.S., and apply to ongoing investigations whenever an officer faces possible dismissal, demotion, or suspension without pay, regardless of whether the employing agency has received a written complaint.<sup>84</sup>

Section 112.533, F.S., applies to complaints and records obtained pursuant to the agency’s investigation of the complaint; the statute 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.<sup>85</sup> Thus, a circuit judge ordered a police department to provide the press with a copy of an unredacted incident report that identified a police officer involved in a shooting of an armed suspect.<sup>86</sup> Similarly, a 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.<sup>87</sup>

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.<sup>88</sup> However, if the complaint

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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.<sup>89</sup>

*The exemption is of limited duration.* 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.<sup>90</sup>

Thus, a court found 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.<sup>91</sup>

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 the information public prior to the conclusion of the investigation.<sup>92</sup> 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."<sup>93</sup>

*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.*<sup>94</sup>

## **(2) Law enforcement officer's access**

Any political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must *within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation.*<sup>95</sup> Section 112.533(2)(a), F.S., states that the confidential nature of the complaint does not preclude