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To: VolusiaExposed.Com <VolusiaExposed@cfl.rr.com>, Byron, Dave
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Subject: RE: Officer misconduct record releases
Date: Fri, 11 Nov 2011 14:18:10 -0500

In response to your inquiry, this reply is offered on behalf of the Sheriff's Office and addresses Sheriff's Office policies and procedures. Specifically, this response addresses your questions related to the disciplinary process within the Sheriff's Office and the public release of documents generated pursuant to Sheriff's Office disciplinary or internal affairs (IA) investigations that result in adverse punitive action against sworn officers. Speaking for the Sheriff's Office, the County policy for release of IA records as documented in the article published in the Daytona Beach News-Journal on November 2, 2011 is consistent with the manner in which Sheriff's Office IA records have been released in the past. To clarify, this is not a new policy for the Sheriff's Office. Rather, it has been the Sheriff's Office's past practice to release IA records only after the notice of intent to take disciplinary action has been received by the affected employee, the pre-disciplinary hearing process has run its course and then a final written notice of disciplinary action has been generated and received by the affected employee. We rely on the same AGO opinion (95-59) cited by Assistant County Attorney Jones in following this practice.

As correctly noted in your e-mail inquiry, F.S. 112.533 states that records associated with a complaint filed against a law enforcement officer are confidential and exempt from public disclosure until such time as either the investigation ceases to be active, or until such time as the agency head or his/her designee provides written notice to the officer who is the subject of the complaint that the investigation has been concluded with a finding to either proceed or not proceed with disciplinary action or the filing of charges. Our legal interpretation, which is supported by the previously cited AGO opinion, is that a notice of intent to take adverse, or punitive disciplinary action does not signal the conclusion of the investigation and likewise does not constitute a finding to proceed, as the notice of intent is subject to potential modification or even reversal depending on the outcome of the pre-disciplinary process and the rendering of a final disciplinary decision. It is for this reason that the Sheriff's Office has not and does not release IA records upon an employee's receipt of a notice of intent to take disciplinary action, as the disciplinary process is not complete and therefore the records are not subject to public records disclosure at that stage of the process. Again, this position is wholly supported by Florida statutes and AGO opinion.

As further clarification, the County Personnel Board represents a post-disciplinary appeal, not a pre-disciplinary hearing procedure. Accordingly, it is Sheriff's Office policy that IA records become publicly releasable upon the affected employee's receipt of the final notice of disciplinary action that comes after the pre-disciplinary process has been exhausted. In response to your public records request for a copy of Sheriff's Office policy authorizing and defining our pre-disciplinary hearing procedures, I refer you to the information below (Directive 26.1 is attached to this e-mail in its entirety for your reference):

26.1.31

Adverse punitive actions are actions wherein the employee suffers an involuntary reduction in pay or status. All adverse actions require the Sheriff obtain concurrence from the County Legal and Personnel Departments.(CALEA 26.1.5)

ADVANCE NOTICE REQUIRED

26.1.32

Having obtained the required concurrence, the Sheriff shall provide an employee with a written NOTICE OF INTENT describing the charge and its effective date at least three (3) working days in advance of the proposed effective date of any adverse action.

26.1.33

The statement of charges shall fully explain the reasons for the proposed action. The Notice shall also fully explain the employee's right to respond to the charges within three (3) working days after receipt of the Notice.

NOTICE OF FINAL ACTION

26.1.34

If there is no response or the response is inadequate to alter the proposed action, the Sheriff shall provide a Notice of Final Action, which shall include advice on the employee's right to appeal and proceed with the action.

I trust this answers your questions as they relate to Sheriff's Office policies and procedures. I'll leave it to others to respond on behalf of the rest of County Government. In closing, on a purely personal note, I'm a little perplexed as to the exact nature of your concern. The purpose for releasing records related to internal investigation in compliance with applicable state statutes and AGO opinions is not to thwart public records law or intentionally delay the release of records to the public. Rather, it's to ensure that the due process rights of employees potentially facing adverse disciplinary action are fully protected. I would think that protecting the due process rights of employees would be something that you would support.

Regards,

Gary