CAO 2013-039

To: City of Coral Gables Personnel

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Approved: Craig Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Overview and Analysis of Florida Public Records Law and Exemptions

Date: September 10, 2013

This memorandum was drafted to provide an overview and analysis of the public records law and exemptions set forth in Chapter 119 of the Florida Statutes. It is intended to serve as a guide for the City of Coral Gables employees responsible for responding to public records requests on behalf of the various City departments and divisions. Every effort should be made to ensure that records that are exempt or contain exempt information are properly handled and/or redacted prior to production. In order to ensure the City's compliance with the dictates of the law, any questions concerning the applicability of an exemption to a particular record or the specific contents of a record, should be expressly directed to the City Attorney's Office. Moreover, please note that this memorandum is a working document and, as such, it may be modified as the law in this area develops and/or new issues are brought to our Office's attention.

I. Overview of Public Records Law & Judicial Cautions

Florida's Public Records Act, as set forth in Chapter 119 of the Florida Statutes, is intended to provide open access to government as well as to private entities acting on their behalf. On a practical level, Florida courts recognize that "[a]ll documents falling within the scope of the Act are subject to public disclosure unless specifically exempted by an act of our legislature." *News–Press Publishing Co., Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980). The Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be construed narrowly and limited to their stated purpose. *See Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986). "Absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's

interest in disclosure and the damage to an individual or institution resulting from such disclosure." *Gadd*, 388 So. 2d at 278. Therefore, barring an applicable statutory exemption, records that are responsive to a public records request should be provided to the requestor. This right to access is also recognized in Article I, Section 24 of the Florida Constitution.

A. Public Records Are Not Limited To Written Documents

The term "public record" is not limited to traditional written documents. Section 119.011(12), Florida Statutes, sets forth an expansive definition for materials deemed to be public records.[1] The Florida Supreme Court has interpreted the statutory definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). Therefore, "the form of the record is irrelevant ...." Op. Att'y Gen. Fla. 04-33 (2004); *see also National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009) ("public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form").

B. Drafts, Notes, Emails, and Text Messages Can Be Public Records

The term "public record" means any material, including a draft, note, email, or text messages, prepared in connection with official agency business, which is intended to perpetuate, communicate, or formalize knowledge of some type. *Shevin*, 379 So. 2d at 640. For example, in *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting.

II. <u>Inspection and Copying of Public Records Cannot be Unreasonably Restricted</u>

Section 119.07(1)(a) of the Florida Statutes establishes that "[e]very person who has custody of a public record shall permit the record to be inspected and copied by *any person* desiring to do so, *at any reasonable time, under reasonable conditions, and under supervision* by

[1] "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(12), Fla. Stat.

the custodian of the public records." (Emphasis added). The term "reasonable conditions" "refers not to conditions that must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). *See also State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905); *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S. Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction). Therefore, the right of inspection may not be frustrated or circumvented through indirect means. *State ex rel. Davidson v. Couch*, 158 So. 103, 105 (Fla. 1934) (the right of inspection was "hindered and obstructed" by the city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). Moreover, any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. *DePerte*, 105 S. Ct. at 2315.

A. Any Person Can Inspect and Copy Public Records

Any person can inspect and copy public records. *Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. Feb. 27, 1997); *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996) ("[A]s long as the citizens of this state desire and insist upon 'open government' and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws."); *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. Dec. 17, 1991); *see also Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002).

B. The Public Record Requestor is not Required to Provide the Motive for Inspection

The requestor is not required to explain the purpose or reason for a public records request. "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act." Curry, 811 So. 2d at 742. *See also Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886 n.3 (Fla. 3d DCA 2005) ("generally, a person's motive in seeking access to public records is irrelevant"); *Gadd*, 388 So. 2d at 278 ("the newspaper's motives [for seeking the documents], as well as the hospital's financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act").

C. City Has the Duty to Acknowledge Requests Promptly and Respond in Good Faith

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), Fla. Stat. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. *Id.*

D. The City Cannot Require a Public Records Request to be in Writing

The City may request but cannot require that requests for public records be in writing. *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305 n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"). A custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid. Op. Att'y Gen. Fla. 80-57 (1980).

E. The City Cannot Require the Requestor Disclose Identity or Background Information

A person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. Op. Att'y Gen. Fla. 92-38 (1992); Op. Att'y Gen. Fla. 91-76 (1991); *see also Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself).

F. The City is Not Required to Answer Questions About its Public Records or Create a New Record in Response to a Request for Information.

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. Section 119.07(1)(a) and (4), Fla. Stat. However, a custodian is not required to give out information from the records of his or her office. Op. Att'y Gen. Fla. 80-57 (1980). The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. Op. Att'y Gen. Fla. 92-38 (1992). However, an agency must respond to requests for information as to costs in order to comply with the public records request. *Wootton v Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991); *see also Woodard v. State*, 885 So. 2d 444, 445 n.1 (Fla. 4th DCA 2004) (remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records).

G. The City Must Provide a Copy of the Record in the Requested Medium if it Maintains the Record in that Medium.

1. Records Available in More than One Medium

The City must provide a copy of the record in the medium requested if it maintains the record in that medium, and the agency may charge a fee which shall be in accordance Section 119.01(2)(f), Fla. Stat. Thus, a custodian of public records must, if asked for a copy of a computer software disk used by the City, provide a copy of the disk in its original format. *See* Section 119.07(1), Fla. Stat.; Op. Att'y Gen. Fla. 91-61 (1991); *see also Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request).

2. Reformatting Records

As stated in *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983), the intent of the Public Records Act is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." Accordingly, the City is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. Op. Att'y Gen. Fla. 08-29 (2008).

H. The City Must Respond to a Public Records Request Within a Reasonable Time

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), Fla. Stat. The Public Records Act, however, does not contain a specific time limit for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Tribune Company*, 458 So. 2d at 1078; *see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998) (the court said that in view of the "nature and volume of the materials requested [over 9000 pages], their location, and the need for close supervision by some knowledgeable person of the review of those records for possible exemptions," the amount of time expended by the county to produce the records (several weeks) to opposing counsel was not unreasonable).

A municipal policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company*, 458 So. 2d at 1078-1079; *see also Michel v.*

Douglas, 464 So. 2d 545, 546 n.2 (Fla. 1985), wherein the Florida Supreme Court noted that a county resolution imposing a 24-hour waiting period before allowing inspection of county personnel records which had been upheld in an earlier appellate decision was no longer enforceable in light of subsequent judicial decisions.

I. The City Must State the Basis for its Refusal to Release an Exempt Record

Section 119.07(1)(e), Florida Statutes, states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), Fla. Stat.; *see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) (agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption"); *Langlois v. City of Deerfield Beach, Florida*, 370 F. Supp. 2d 1233 (S.D. Fla. 2005) (city fire chief's summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records).

III. <u>The City Can Lawfully Impose Certain Fees for Inspection and Copying of Public Records</u>

Section 119.07(4)(d), Fla. Stat., authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. *See Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required). Op. Att'y Gen. Fla. 00-11 (2000).

The City of Coral Gables has enacted in its code a reciprocal ordinance.

Sec. 2-389. Fees for copies of ordinances and other records.

(a) In accordance with the provisions of F.S. § 119.07, with respect to public records requests, the city is permitted and shall charge an extensive research fee whenever extraordinary time constraint is designated by the person requesting copies or research of public records, requiring extraordinary expenditure of time by the city clerk's office or other city department acting as records custodian. To comply with the request, the city clerk or other city department

acting as records custodian, shall collect the cost of providing such extraordinary services (i.e., the extensive research fee) in advance and in addition to the fees which shall be established by the city. For purposes of this section the term "extraordinary expenditure of time" shall mean 20 minutes or more. The extensive research fee shall be calculated using the hourly wage of the employee performing such services.

(b) The charges which shall be made for all statements, copies of documents, reports and certificates rendered by the offices of the city shall be in the amount established by the city commission.

(c) All such charges shall be paid into the city's general fund.

IV. Public Record Exemptions

This section sets forth many, but not all, exemptions from the public records.

A. Personnel Records

1. Personnel Records Generally

The general rule with regards to personnel records is the same as for other public records unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records; personnel records are subject to public inspection and copying under Section 119.07(1), Fla. Stat.; *see Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985). Therefore, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. Op. Att'y Gen. Fla. 94-75 (1994); Op. Att'y Gen. Fla. 94-54 (1994). Moreover, Section 69.081(8)(a), Fla. Stat, part of the Sunshine in Litigation Act, provides, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is "void, contrary to public policy, and may not be enforced." *See also* Inf. Op. to Barry, June 24, 1998.

2. Employment Search or Consultant Records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency, records made or received by the private company in connection with the search are public records. Op. Att'y Gen. Fla. 92-80 (1992); *see also Shevin*, 379 So. 2d at 633 (consultant firms hired to conduct an employment search for position of managing director of a public agency was

"acting on behalf of" a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of the search were public records).

3. Privacy Concerns

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. *See Michel*, 464 So. 2d at 546 (holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist). "Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees, as a general rule, do not have privacy rights in such records." *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 940 n.4 (Fla. 2002). *But see Fadjo v. Coon*, 633 F.2d 1172, 1175 n.3 (5th Cir. 1981) (noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy"). Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. *See e.g., Gadd*, 388 So. 2d at 278 (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure). Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989); *see also Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA 1990).

4. Collective Bargaining

a. Relationship of Collective Bargaining Agreements to Personnel Records

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. Op. Att'y Gen. Fla. 77-48 (1977). Thus, employee grievance records are disclosable 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." *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). Similarly, a city may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. Op. Att'y Gen. Fla. 94-75 (1994).

b. Collective Bargaining Work Product Exemption

Section 447.605(3), Fla. Stat., states that all work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of Section 119.07(1), Fla. Stat. The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, Fla. Stat. *See Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st DCA 1980) (noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the Section 447.605(3) exemption); *see also Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer). Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions that reflect the impressions, strategies and opinions of the district representative are exempt pursuant to Section 447.605(3), Fla. Stat.; Inf. Op. to Fulwider, June 14, 1993.

5. Application of the Public Records Act to Specific Personnel Records

a. Annuity or Custodial Account Activities

Records identifying individual participants in any annuity contract or custodial account under Section 112.21, Fla. Stat. relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies and their personal account activities are confidential and exempt from Section 119.07(1), Fla. Stat. Section 112.21(1), Fla. Stat.

b. Applications for Employment, References, and Resumes

Applications and resumes are subject to disclosure after redaction of statutorily exempt information such as social security numbers. *See* 379 So. 2d at 633; Op. Att'y Gen. Fla. 77-48 (1977). Similarly, communications from third parties are subject to disclosure. *See Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982).

c. Complaints Against Employees

Like other personnel records, complaints alleging misconduct by employees are not exempt from disclosure in the absence of statutory exemption. *See, e.g.*, Op. Att'y Gen. Fla. 04-22 (2004)(anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). However, the Legislature has enacted statutes exempting certain complaints and the resulting investigative records from disclosure until the investigation is concluded.

For instance, complaints and other records in the custody of any agency that relates to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt until a finding of probable cause is made, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. Section 119.071(2)(g)(1)(a), Fla. Stat.

In addition, a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt until the investigation ceases to be active or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either: (a) concluded the investigation with a finding not to proceed with disciplinary action or file charges; or (b) concluded the investigation with a finding to proceed with disciplinary action or file charges. Section 119.071(2)(k)(1), Fla. Stat.[2]

i. Law Enforcement Officers and Correctional Officers

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. *See Cannella*, 438 So. 2d at 524, quashed on other grounds, 458 So. 2d 1075 (Fla. 1984); *Deperte*, 105 S. Ct. at 2315 (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency").

However, Section 112.533(2)(a), Fla. Stat., 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 or her 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. Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. Op. Att'y Gen. Fla. 93-61 (1993). However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991).

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[2] This provision was added to Section 119.071, Fla. Stat. through 2013 Fla. Sess. Law Serv. Ch. 2013-248 (C.S.H.B. 1075), and became effective on July 1, 2013.

The exemption is of limited duration. Section 112.533(2), Fla. Stat., establishes that 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. Op. Att'y Gen. Fla. 95-59 (1995). Thus, a court ruled that 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. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000). 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 this information public prior to the conclusion of the investigation. Op. Att'y Gen. Fla. 95-59 (1995). 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." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

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. Section 112.533(2)(b), Fla. Stat. *See City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness—especially, as here, where there is other record evidence which sustains it").

ii. Limitations On Disclosure

Section 112.533(2)(b), Fla. Stat., states that the inspection provisions in that subsection does not apply to any public record which is exempt from public disclosure under Ch. 119 of the Florida Statutes. For example, active criminal investigative or intelligence information which is exempt pursuant to Section 119.071(2)(c), Fla. Stat., remains exempt notwithstanding the disclosure provisions set forth in Section 112.533(2)(a), Fla. Stat. *Neumann*, 796 So. 2d at 1278; Op. Att'y Gen. Fla. 91-73 (1991). Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in Section 112.533(2), Fla. Stat. Cf. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status). Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt pursuant to Section 119.071(2)(h), Fla. Stat. *Neumann*, 763 So. 2d at 1181.

Section 112.533(4), Fla. Stat., 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 before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), Fla. Stat. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

d. Criminal History Information

Except where specific exemptions apply, criminal history information is a public record. Op. Att'y Gen. Fla. 77-125 (1977); Inf. Op. to Lymn, June 1, 1990. In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from Section 119.07(1), Fla. Stat., or use of the information is restricted. *See, e.g.*, Section 110.1127(3)(d) and (e), Fla. Stat. (positions in programs providing care to children, the developmentally disabled, or vulnerable adults, or positions having access to abuse records); Section 1002.36(7)(d), Fla. Stat. (School for the Deaf and the Blind); and Section 39.821, Fla. Stat. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection under Florida's Public Records Act. Op. Att'y Gen. Fla. 99-01 (1999).

Sections 943.0585 and 943.059, Fla. Stat., prohibits a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. Op. Att'y Gen. Fla. 94-49 (1994).

e. Deferred Compensation

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt. Section 112.215(7), Fla. Stat.

f. Direct Deposit

Direct deposit records made prior to October 1, 1986, are exempt from Section 119.07(1), Fla. Stat. With respect to direct deposit records made on or after October 1, 1986, the names of

the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), Fla. Stat.

g. Drug Test Results

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with Section 112.0455, Fla. Stat., (the Drug-Free Workplace Act), are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), Fla. Stat. See also Section 112.0455(8)(l) and (u), Fla. Stat. While the provisions of Section 112.0455, Fla. Stat., are applicable to state agencies and not to municipalities, Section 440.101-440.102, Fla. Stat., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. *See* Op. Att'y Gen. Fla. 98-38 (1998). Section 440.102(8)(a), Fla. Stat., provides for confidentiality of drug test results or other information received as a result of a drug-testing program. *Cf.* Op. Att'y Gen. Fla. 94-51 (1994) (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to Section 440.102, Fla. Stat.); Inf. Op. to McCormack, May 13, 1997 (Section 440.102[8], Fla. Stat., applies to public employees and not to drug test results of public assistance applicants); *See also* Section 443.1715(3), Fla. Stat. (relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the unemployment compensation law). In Op. Att'y Gen. Fla. 96-58 (1996), the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to Section 401.265(2), Fla. Stat., which requires a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to Section 440.101-440.102, Fla. Stat.

h. Evaluations of Employee Performance

Evaluations of public employee performance, like other public records, are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977), no policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

i. Examination Questions and Answer Sheets

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), Fla. Stat.; *see Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [that] 'tested' the applicants' response both as to style and content").

The exemption from disclosure in section 119.071(1)(a) applies to examination questions and answers, but does not include the "impressions and grading of the responses" by the examiners. Section 119.071(1)(a), Fla. Stat; *Dickerson*, 543 So. 2d at 836. *See also* Op. Att'y Gen. Fla. 76-210 (1976), (stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed). However, the examinee possesses only the right to review his or her own completed examination and may not make or obtain copies of that examination. Op. Att'y Gen. Fla. 81-12 (1981).

j. Home Addresses, Telephone Numbers, Photographs, and Family Information

As a general rule, home addresses and telephone numbers of public officers and employees are not exempt from disclosure. *See* Op. Att'y Gen. Fla. 96-88 (1996) (home addresses, telephone numbers, business addresses, and telephone numbers of members of state and district human rights advocacy committees are public records*); Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files).

However, the home addresses and other personal information pertaining to certain current or former public officers and employees has been exempted by law. More specifically, Section 119.071(4)(d), Fla. Stat., exempts the home addresses, telephone numbers, photographs, and family information for certain public officers and employees as listed below. Section 119.071(4)(d), Fla. Stat., references the social security number for some of the designated employees. Section 119.071(4)(a), Fla. Stat., states that "social security numbers of all current and former agency employees held by the employing agency" are confidential and exempt. *See* Section 119.071(5)(a), Fla. Stat. (providing confidentiality for social security numbers held by an agency). The following current or former employees' personal records are exempt:

- The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children

and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)(d)2.a.

• The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters. Fla. Stat. § 119.071(4)(d)2.b.

• Human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)(d)2.f.

• The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)2.(g).

• The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)2.(h).

• The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)2.i.

• The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel. Fla. Stat. § 119.071(4)2.j.

• The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. Fla. Stat. § 119.071(4)2.k.

• The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)2.l.

• The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county

court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges. Fla. Stat. § 119.071(4)(d)2.c.

• The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)(d)2.e.

• Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate; Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and the name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate. Fla. Stat. § 119.071(5)(i).

• Current and former hospital employees. Section 395.3025(10), Fla. Stat.

• Domestic violence and other specified crime victims. Section 119.071(2)(j)(1), Fla. Stat.

The above list is not exhaustive; therefore, employees charged with reviewing and providing public records should consult Florida Statutes, Chapter 119 to determine whether an exemption applies for personal identifying information ***before such information is released.***

An agency that is the custodian of personal information specified in Section 119.071(4)(d)(1), Fla. Stat., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the

designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)(2), Fla. Stat. *See* Op. Att'y Gen. Fla. 97-67 (1997) (official records maintained by clerk of court); Op. Att'y Gen. Fla. 04-18 (2004) (applying exemption when requested to petitions and campaign papers filed with supervisor of elections); Op. Att'y Gen. Fla. 04-20 (2004) (request submitted to property appraisers). The following officers/employees are exempt from the public record.

k. Retirees

The names and addresses of retirees are confidential and exempt from the provisions of Section 119.07(1), Fla. Stat., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except to a public agency engaged in official business. However, a state or local government agency may provide the names and addresses of retirees from that agency to a bargaining agent as defined in Section 447.203(12), Fla. Stat., or to a retiree organization for official business use. Lists of names or addresses of retirees may be exchanged by public agencies, but such lists shall not be provided to, or open for inspection by the public. Any person may view or copy any individual's retirement records at the Department of Management Services one record at a time, or may obtain information by a separate written request for a named individual for which information is desired.

l. Medical Records Exemption—Florida Statutes Section 119.071(4)

Section 119.071(4)(b) of the Florida Statutes states that medical records of any employee are confidential and cannot be disclosed. *Id.* As such, medical records are to be held confidential and may not be disclosed in response to any public records request. Moreover, the confidentiality requirement extends to any prospective, current, or former employee of a county, city, or municipality in Florida. *Id.* Furthermore, pursuant to Section 110.123(9), Fla. Stat., the medical records of a current or former employee's dependent are also confidential and exempt from Florida's Public Records law. Similarly, under Section 760.50(5), Fla. Stat., any information regarding an employee's medical status or medical condition should be kept confidential.

m. ***Medical Claims Exemption—Florida Statutes Section 112.08(7)***

The confidentiality of medical records, as authorized in Section 112.08(7), Fla. Stat., extends to medical claims made by employees. Op. Att'y Gen. Fla. 94-78 (1994). Florida courts have analyzed the extent of Section 112.08(7) of the Florida Statute's application and concluded that it provides a broad exemption to the Public Records Law. *News-Press Pub. Co., Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987); Op. Att'y Gen. Fla. (2008). Accordingly, all medical records and medical claims records, including worker's compensation claims, held by

the city are exempt from the public record and confidential. *Kaune*, 511 So. 2d at 1023. Thus, any and all claims made by employees, are confidential.

i. Notice of Injury Form—Florida Statutes Section 440.185

In relation to worker's compensation issues, please be advised that a "Notice of Injury" filed pursuant to Florida Statute Section 440.185 is not a medical record and as such is a public record even if medical information is contained in the Notice. Indeed, "the fact that medical information is included in a document does not convert it to a medical record which is exempt from disclosure." Op. Att'y Gen. Fla. 90-88 (1990). In fact, the Attorney General noted that:

> The statute treats medical reports and records separately from Notice of Injury forms .... Thus, a distinction appears to have been made by the separate treatment of medical records and reports within the statute and there is no indication that the Legislature intended that a notice of injury form be treated as a medical report or record.

Id. Therefore, in providing a response to a public records request, any notice of injury form should be disclosed to the individual requesting such records.

Please bear in mind, however, that the Notice of Injury may contain confidential information that may require proper redaction. Fla. Admin. Code Ann. R. 69L-6.022. Indeed, any information contained in the Notice that would "identify an ill or injured employee" should be redacted. *Id.* Information identifying an ill or injured employee includes: name or signature; social security number; business, residence, and mailing addresses; and residence and business telephone numbers. *Id.* Accordingly, that information should be properly redacted from a Notice of Injury before the notice can be disclosed in response to a public records request.

n. Salary Records

Salary and other information relating to compensation are subject to disclosure. Lewis v. Schreiber, No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), *per curiam affirmed*, 611 So. 2d 531 (Fla. 4th DCA 1992). *Accord* Op. Att'y Gen. Fla. 73-30 (1973).

o. Undercover Personnel of Criminal Justice Agencies

Section 119.071(4)(c), Fla. Stat., provides that any information revealing undercover personnel of a criminal justice agency is exempt from public disclosure.

B. Security System Information and Blueprints

1. Security System Information and Plans

Information relating to the security systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, Fla. Stat. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such security systems or information. *Id.* The exemption extends to information relating to or revealing the security systems for property owned or leased by the state or its political subdivisions, and also to security information concerning privately owned or leased property which is in the possession of an agency. Op. Att'y Gen. Fla. 01-75 (2001); Op. Att'y Gen. Fla. 93-86 (1993). *See also* Section 331.22, Fla. Stat. (airport security plans); Section 311.13, Fla. Stat. (seaport security plans).

Section 119.071(3)(a), Fla. Stat., provides a similar exemption from disclosure for a security system plan of a private or public entity that is held by an agency. However, the information may be disclosed to the property owner or leaseholder as well as to another state or federal agency to prevent, detect, or respond to an attempted or actual act of terrorism or for prosecution of such attempts or acts. *Id.*

The term "security system plan" includes: records relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security manuals. *Id.*

Sections 281.301 and 119.071(3)(a), Fla. Stat., prohibit public disclosure of the names and addresses of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). Accord Op. Att'y Gen. Fla. 04-28 (2004). *See also Times Publishing Company v. City of Pensacola*, No. 2002-2053 (Fla. 1st Cir. Ct. Nov. 13, 2002), *per curiam affirmed*, 869 So. 2d 547 (Fla. 1st DCA 2004) (police department records of "specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel" were exempt from disclosure under Section 119.071(3)(a), Fla. Stat.).

2. Security Issues Relating to Electronic Records

Section 119.01(2)(a), Fla. Stat., states that agencies "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." *See also* Rule 1B-26.003(6)(g)(3), F.A.C, adopted by the Division of Library and Information Services of Department of State pursuant to its records management rulemaking authority in Section 257.14, Fla. Stat. The rule states that "[i]n providing access to electronic records, agencies shall ensure that procedures and controls are in place to maintain confidentiality for information which is exempt from public disclosure." *Cf. Rea v. Sansbury*, 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this "does not mean that every means adopted by the county to facilitate the work of county employees ipso facto requires that the public be allowed to participate therein").

But see Op. Att'y Gen. Fla. 05-12 (2005) (city may not require use of a code to review e-mail correspondence of city police department and human services department). In addition, risk analysis information relative to security threats to data and information technology resources of an agency are confidential and exempt. Section 282.318(4)(c), Fla. Stat. Internal policies and procedures to assure the security of the data and information technology resources which, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources are confidential and exempt. Section 282.318(4)(d), Fla. Stat. Results of periodic audits and evaluations of a security program for an agency's data and information technology resources are confidential and exempt. Section 282.318(4)(f), Fla. Stat.

3. Blueprints

Section 119.071(3)(b)(1), Fla. Stat., exempts building plans, blueprints, schematic drawings, and diagrams of government buildings. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the building, or upon a showing of good cause to a court. Section 119.071(3)(b)(3), Fla. Stat.

Exempt documents may also be released in order to comply with competitive bidding requirements. Op. Att'y Gen. Fla. 02-74 (2002). However, the entities or persons receiving such information must maintain the exempt status of the documents. *Id.*; *see* Section 119.071(3)(c)(1), Fla. Stat. (exemption for building plans, blueprints, schematic drawings and diagrams of various attractions, retail, resorts, offices, and industrial complexes and developments when the records are held by an agency). The exemption afforded by this statute does not apply to comprehensive plans, site plans, or amendments thereto that are submitted for approval or that have been approved under local land development regulations, local zoning regulations, or development of regional impact reviews. Section 119.071(3)(c)(4), Fla. Stat.

C. Other Protected Personal Identifying Information

1. Social Security Numbers

Section 119.071(5)(a)(5), Fla. Stat., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements; however, the exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. *See, e.g.*, Section 193.114(5), Fla. Stat. (social security number submitted on an application for a tax exemption is confidential); Section 119.071(4)(a), Fla. Stat. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure). *See* Section 119.0714, Fla. Stat. (regarding confidentiality of social security numbers in court records and in the Official Records).

Section 119.071(5)(a)(6), Fla. Stat., authorizes disclosure of social security numbers under certain conditions. Section 119.071(5)(a)(7)(b), Fla. Stat., states that an agency may not deny a commercial entity engaged in "commercial activity" as defined in the exemption, access to social security numbers, "provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers." "Commercial activity" does not include the display or bulk sale of social security numbers to the public, or the distribution of such numbers to any customer not identifiable by the commercial entity. Section 119.071(5)(a)(7)(a)(1), Fla. Stat. *See also* Op. Att'y Gen. Fla. 10-06 (2010) (stating that while Section 119.071(5)(a)(6) and (7), Fla. Stat., authorize the disclosure of social security numbers to commercial entities engaged in the commercial activities identified in the statute, these provisions authorize the agency holding social security numbers to request additional information that is reasonably necessary to verify the identity of the commercial entity, and the specific purposes for which the social security numbers will be used).

2. Bank Account Numbers

Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt. Section 119.071(5)(b), Fla. Stat.

3. Biometric Identification Information

Biometric identification information held by an agency is exempt. The term "biometric identification information" means: any record of friction ridge detail, fingerprints, palm prints, and footprints. Section 119.071(5)(g), Fla. Stat.

4. Motor Vehicle Records

Motor vehicle records containing personal and/or highly restricted personal information, depending upon the context, may be both exempt and confidential under state and/or federal law. In Opinion Number 10-10, the Florida Attorney General analyzed the Driver's Privacy Protection Act of 1994 ("DPPA"), codified in 18 U.S.C. 2721 *et seq.*, as it relates to Florida's Public Records law and stated:

[P]ursuant to Section 119.0712(2), Fla. Stat., a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying whether that information[:] "a. was obtained from a statement by the owner of the driver's license; b. was obtained by the officer when viewing the driver's license; or c. was obtained from viewing a record of the Department of Highway Safety and Motor Vehicles." A driver's license number is "personal information" within the scope of Section 119.0712(2), Fla. Stat., and is confidential as it is held and maintained in a "motor vehicle record" by the Florida Department of Highway Safety and Motor Vehicles. This information continues to be confidential in the hands of local law enforcement for permissible uses within the scope of the statute and federal provisions. However, the statute does not reach to records created by local law enforcement, which may contain such personal information. Op. Att'y Gen. Fla. 10-10 (2010).

The DPPA defines "personal information" as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. § 2725(1).

D. Financial Records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. *See* Op. Att'y Gen. Fla. 96-96 (1996) (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

1. Audit Reports

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(a), Fla. Stat. The audit becomes final when the audit report is presented to a unit of local government. Until the audit becomes final, the audit work-papers and notes related to such audit report are

confidential. Id.; *see Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). The term "internal auditor" encompasses an official within county government who is responsible under the county code for conducting an audit. Op. Att'y Gen. Fla. 99-07 (1999).

2. Bids and Financial Statements

Section 119.071(1)(b)(2), Fla. Stat., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening, whichever is earlier. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation, and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)(3), Fla. Stat.

"Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07(1) and Section 24(a), Art. I of the State Constitution." Section 119.071(1)(c), Fla. Stat.

3. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974). The exemption afforded by Section 447.605(3), Fla. Stat., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden*, 340 So. 2d at 977. *See also* Op. Att'y Gen. Fla. 92-56 (1992) (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

E. Emergency Records

1. Emergency "911" Records

Section 365.171(12), Fla. Stat., exempts from the public records, and makes confidential any record, recording, or information, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications 911 system. Op. Att'y Gen. Fla. 90-43 (1990) (only that portion of 911 tape relating to name, address, and telephone number of the caller exempt).

A tape recording of a "911" call is a public record that is subject to disclosure after the deletion of the exempt information. Op. Att'y Gen. Fla. 93-60 (1993). This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. Op. Att'y Gen. Fla. 95-48 (1995); *see also* Inf. Op. to Fernez, Sept. 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

In addition, an audio recording that records the "killing of a person" is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 406.136, Fla. Stat.

2. Emergency Evacuation Plans

Section 119.071(3)(a), Fla. Stat., exempts from disclosure a security system plan of a private or public entity that is held by an agency. The term "security system plan" includes emergency evacuation plans and sheltering arrangements. Section 119.071(2)(d), Fla. Stat., exempts from disclosure "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, Chapter 23 [Florida Mutual Aid Act], and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies ...." Section 395.1056, Fla. Stat., exempts those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

3. Emergency Notification

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from disclosure

requirements. Section 119.071(5)(j)(1), Fla. Stat. The e-mail addresses and corresponding home, school, and other "watched addresses of concern" provided for participation in the Florida Department of Law Enforcement Offender Alert System are within the scope of this exemption. Op. Att'y Gen. Fla. 11-16 (2011).

4. Special Needs Registry

Records relating to the registration of persons with special needs (i.e., persons who would need assistance during evacuations and sheltering due to physical, mental, cognitive impairment, or sensory disabilities), are confidential and exempt, except such information is available to other emergency response agencies as determined by the local emergency management director. Section 252.355(5), Fla. Stat.

5. Sensitive Data Processing Software

Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 812.081, Fla. Stat., and agency-produced data processing software that is sensitive are exempt. Section 119.071(1)(f), Fla. Stat.

F. Investigative Records of Non-Law Enforcement Agencies

1. Ethics Investigations

The complaint and records relating to the complaint or to any preliminary investigation of the Florida Ethics Commission, a Commission on Ethics and Public Trust established by a county or municipality, or by a county or city that has established a local investigatory process to enforce more stringent standards as provided in Section 112.326, Fla. Stat., are confidential and exempt until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records be made public, or until the commission, county, or city determines whether probable cause exists. Section 112.324(2)(a) and (c), Fla. Stat.; *see also* Section 112.3215(8)(b) and (d), Fla. Stat. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, nothing in Section 112.324, Fla. Stat. provides confidentiality for similar or identical information in the possession of other agencies of government. Op. Att'y Gen. Fla. 96-05 (1996). Thus, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part III, Ch.

112, Fla. Stat., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate complaints of ethics violations. *Id.*

2. Local Government Inspector General Investigations

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2)(a), Fla. Stat. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id. Cf. Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998) (noting that a draft audit report prepared by the clerk of court did not become "final" when it was reviewed by the county administrator; the report became "final" and subject to disclosure when presented to the county commission). Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. Section 119.0713(2)(a), Fla. Stat.

3. State Inspector General Investigations

Audit notes and reports of state agency inspectors general appointed in accordance with Section 20.055, Fla. Stat., are public records to the extent that they do not include information that has been made confidential and exempt from Section 119.07(1), Fla. Stat. Section 20.055(5)(b), Fla. Stat. However, Section 112.31901(2), Fla. Stat., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under Section 112.3189, Fla. Stat., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from Section 119.07(1), Fla. Stat. until the investigation ceases to be active, a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received—whichever first occurs. Section 112.31901(1), Fla. Stat. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), Fla. Stat. *Cf.* Section 943.03(2), Fla. Stat. (providing for confidentiality of Department of Law Enforcement records relating to an active investigation of official misconduct).

4. State Licensing Investigations

Pursuant to Section 455.225(10), Fla. Stat., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential and exempt from disclosure until 10 days after probable cause has been found to

exist by the probable cause panel of the licensing board, by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality—whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and licensing boards within that department as provided in Section 456.073(10), Fla. Stat. Complaints filed by a municipality against a licensed professional are included within the confidentiality provisions. Op. Att'y Gen. Fla. 02-57 (2002). However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city relating to the nature of the alleged offense by the licensed professional. *Id.*

5. Whistle-Blower Investigations

Section 112.3188(1), Fla. Stat., provides that, with limited exceptions, for the confidentiality of the identity of a whistle-blower who discloses, in good faith, to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated, or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. A complainant may waive the right to confidential treatment of his or her name or identity. Op. Att'y Gen. Fla. 95-20 (1995). However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. Op. Att'y Gen. Fla. 96-40 (1996).

In order to qualify as a whistle-blower complaint, particular information must be disclosed to the statutorily designated officials. A general complaint of wrongdoing to officials other than those specifically named in Section 112.3188(1), Fla. Stat., does not entitle the complainant to whistleblower protection. Op. Att'y Gen. Fla. 98-37 (1998). *See also* Op. Att'y Gen. Fla. 99-07 (1999) (county inspector general qualifies as an "appropriate local official" for purposes of the whistle-blower law); Op. Att'y Gen. Fla. 96-40 (1996) (town ethics commission constitutes "appropriate local official" for purposes of processing complaints under the whistle-blower law).

Section 112.3188(2)(a), Fla. Stat., states that except as specifically authorized in Section 112.3189, Fla. Stat., all information received by the Chief Inspector General, an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations, or the Department of Law Enforcement, is confidential and exempt if the information is being received or derived from allegations as set

forth in Section 112.3188(1)(a) or (b), Fla. Stat., and an investigation is "active" as defined by Section 112.3188(2)(c), Fla. Stat.

G. Law Enforcement Investigations

Arrest and crime reports are generally considered to be open to public inspection. Op. Att'y Gen. Fla. 91-74 (1991); Op. Att'y Gen. Fla. 80-96 (1980). However, statutory exemptions for active criminal investigative, intelligence information, confessions, juvenile offender records, and certain victim information may apply to crime reports and other law enforcement records.

1. Active Criminal Investigative and Intelligence Information is Exempt

All criminal intelligence and investigative information received by a criminal justice agency *prior to January 25, 1979*, is exempt from the public record. Section 119.071(2)(a)(d), Fla. Stat. To be exempt, the information must be active. *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). The purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. *See Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986). Criminal intelligence and investigative information is considered "active" as long as it is related to intelligence gathering or an ongoing investigation conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities, an arrest or prosecution in the foreseeable future, or is directly related to pending prosecutions or appeals. Section 119.011(3)(d), Fla. Stat. An investigation will be deemed to be "active" even though there is no immediate anticipation of an arrest so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department,* 639 So. 2d 1012, 1016 (Fla. 4th DCA).

2. Confessions are Exempt

Any information revealing the substance of a confession of a person arrested is exempt until the criminal case is finally determined by adjudication, dismissal, or other final disposition. Section 119.071(2)(e), Fla. Stat.

3. The Identity of a Confidential Informant is Exempt

Information revealing the identity of a confidential informant or a confidential source is exempt from the public record. Section 119.071(2)(f), Fla. Stat.

4. The Identity and Other Personal Information of a Victim of a Crime is Exempt

Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime, and identifies that person as the victim of a crime, and the document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the public record.

5. Upon Written Request by a Sexual Battery, Child, or Domestic Violence Crime Victim, the Identity and Other Personal Information of Such Victim is Exempt

Any information not otherwise held confidential or exempt from Section 119.07(1), Fla. Stat. which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from Section 119.07(1), Fla. Stat. and Section 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Section 119.071(2)(j)(1), Fla. Stat.

6. Resource Inventories, Emergency Response Plans, Surveillance Techniques, and Procedures or Personnel are Exempt

Any information revealing surveillance techniques or procedures or personnel is exempt from the public record. In addition, any comprehensive inventory of state and local law enforcement resources and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency are exempt and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans. Section 119.071(2)(d), Fla. Stat.

7. Information Regarding Undercover Personnel is Exempt

Section 119.071(4)(c), Fla. Stat., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994) (police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released).

H. Litigation Records

1. Attorney-Client Communications

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege that exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979); *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985). The public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over the Florida Bar. *Miami Herald Publishing Company*, 468 So. 2d at 218.

2. Attorney Work Product

With the enactment of Section 119.071(1)(d), Fla. Stat., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. *See City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986) (where the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . . ."). The Attorney Work Product exemption is limited to:

> A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, ***and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings***

Fla. Stat. § 119.071(d)(1) (emphasis added). As illustration, Florida courts in interpreting this exemption have made the following findings: (1) "[an] assistant state attorney's letter containing his mental impressions about the case clearly fits within the exemption of attorney work product prepared with regard to the ongoing postconviction proceedings." *Kearse v. State*, 969 So. 2d 976, 989 (Fla. 2007); (2) "[t]he legislature's use of the phrase 'conclusion of the litigation' encompasses post-judgment collection efforts, which include the claim bill filed here." *Wagner v. Orange County*, 960 So. 2d 785, 791 (Fla. 5th DCA 2007); (3) a trial court should only sustain an objection to a notice to produce "if, but only if, the court determines that the materials or portions thereof are privileged under the above-cited public records law because such material

'reflects a mental impression, conclusion, litigation strategy, or legal theory' of the [petitioner] or its counsel in [the ongoing] litigation." *City of Miami Beach v. De Lapp*, 472 So. 2d 543, 544 (Fla. 3d. DCA 1985) (citing *City of North Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218 (Fla.1985)); and (4) An attorney's memorandum is not exempt under the work product doctrine where the "memorandum appears to be final in form [but] conveyed specific ***factual information rather than mental impressions or litigation strategies***." *Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007).

Under the terms of the statute, the work product exemption "is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney." Section 119.071(1)(d)(2), Fla. Stat. *See also* Op. Att'y Gen. Fla. 94-77 (1994) (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation). The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims. *See State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990); Lightbourne v. McCollum, 969 So. 2d 326 (Fla. 2007) (rejecting a "continuing exemption" claim by the state). The phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007).

3. Criminal Cases

In a criminal case, the "conclusion of the litigation," for purposes of the termination of the work product exemption occurs when the conviction and sentence have become final. *State v. Kokal*, 562 So. 2d 324 (Fla. 1990). However, the state attorney may still claim the work product exemption for his or her current file in a pending motion for post-conviction relief because litigation is ongoing with respect to those documents. *See Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993) (state attorney not required to disclose information from a current file relating to a post-conviction relief motion). The Florida Supreme Court, however, has noted the state's obligation in a criminal case to "disclose any exculpatory document within its possession or to which it has access, even if such document is not subject to the public records law." *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, (1963). *Walton*, 634 So. 2d at 1062. *Accord Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

4. Other Statutory Exemptions Relating to Litigation Records

Section 768.28(16)(b), Fla. Stat., provides an exemption for claim files maintained by agencies pursuant to a risk management program for tort liability until the termination of all

litigation and settlement of all claims arising out of the same incident. *See Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007) (stating that the phrase "settlement of all claims arising out of the same incident" included a legislative claims bill). The exemption afforded by Section 768.28(16), Fla. Stat., is limited to tort claims for which the agency may be liable under Section 768.28, Fla. Stat., and does not apply to federal civil rights actions under 42 U.S.C. § 1983. Op. Att'y Gen. Fla. 00-20 (2000); Op. Att'y Gen. Fla. 00-07 (2000). *See also Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. Oct. 11, 1995) (exemption now found at Section 758.28(16)(b), Fla. Stat., for risk management files did not apply to tapes, witness statements, and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp). See also Section 624.311(2), Fla. Stat. ("records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident"). A county's self-insured workers' compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998).

5. Attorney Notes

Relying on its holding in *Shevin*, 379 So. 2d at 633, the Florida Supreme Court recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Supreme Court held that documents that were preliminary guides created by attorneys intended to aid them later was not a public record. In *Johnson*, 713 So. 2d at 987, the "outlines, timelines, page notations regarding information in the record, and other similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. *See also Patton v. State*, 784 So. 2d 380, 389 (Fla. 2000). The underlying rationale of these decisions is that these materials were not intended to communicate, perpetuate, or formalize knowledge and therefore do not constitute public records.

6. Public Records Exemption Interplay with Sunshine Law

The Supreme Court of Florida has held that in the absence of a statute exempting a meeting in which privileged material is discussed, Section 286.011, Fla. Stat., may not be construed to contain any exceptions for such meetings. Section 119.07(7), Fla. Stat., clearly provides that an exemption from the Public Records Law does not imply an exemption from Section 286.011, Fla. Stat. The exemption from Section 286.011, Fla. Stat. must be expressly provided. Thus, exemptions from the Public Records Law do not, by implication, allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. Op. Att'y Gen. Fla. 12-20 (2012).

However, Section 286.011(8), Fla. Stat. allows a board to hold a confidential attorney-client meeting for the purposes of discussing strategy and settlement of pending litigation. These discussions are transcribed and made public once the litigation is concluded. 286.011(8)(e), Fla. Stat.

Hernandez, Cristina

From: Thornton Richard, Bridgette
Sent: Tuesday, September 10, 2013 5:13 PM
To: Jaramillo-Velez, Elsa; Giallorenzo, Frank; Pounds, Michael; Tompkins, Jane; Spain, Dona; Birdsill, Cynthia; Weiner, Dennis; Sparber, Michael; Keller, Jessica; Springmyer, Troy; Kinney, Kevin; Chow, Gee Ming; Rodulfo, Raimundo; Foeman, Walter; Mendoza, Betty; Gomez, Diana
Cc: Leen, Craig; eric@hernandezlee.com; Figueroa, Yaneris; Franqui, Susan; Hernandez, Cristina; Osle, Zilma
Subject: Public Records Legal Memorandum Attached
Attachments: Public Records Legal Memo - Final Version 9 10 2013.pdf

Good Afternoon,

Attached is the Public Records Legal Memorandum that our Office recently researched and drafted with the assistance of Outside Counsel and Special Counsel. The memo discusses the City's responsibilities under Florida Statutes, Chapter 119 as well as many of the exemptions that may be applicable to City Records. Please let us know if you have any questions.

Thank you and have a nice evening,

Bridgette N. Thornton Richard
Deputy City Attorney for the City of Coral Gables
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Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.
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NOTICE: This e-mail is from the law office of the City of Coral Gables, and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you properly received this e-mail as a client, co-counsel or retained expert of the office of the City Attorney, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

To: City of Coral Gables Personnel

From: Bridgette N. Thornton Richard, Deputy City Attorney,
Yaneris Figueroa, Special Counsel to the City Attorney's Office,
Eric A. Hernandez, Hernandez Lee, LLC, Counsel to the City Attorney's Office

Date: September 10, 2013

RE: Overview and Analysis of Florida Public Records Law and Exemptions

This memorandum was drafted to provide an overview and analysis of the public records law and exemptions set forth in Chapter 119 of the Florida Statutes. This memorandum is intended to serve as a guide for the City of Coral Gables employees responsible for responding to public records requests on behalf of the various City departments and divisions. Every effort should be made to ensure that records that are exempt or contain exempt information are properly handled and/or redacted prior to production. In order to ensure the City's compliance with the dictates of the law, any questions concerning the applicability of an exemption to a particular record or the specific contents of a record, should be expressly directed to the City Attorney's Office.

I. Overview of Public Records Law & Judicial Cautions

Florida's Public Records Act, as set forth in Chapter 119 of the Florida Statutes, is intended to provide open access to government as well as to private entities acting on their behalf. On a practical level, Florida courts recognize that "[a]ll documents falling within the scope of the Act are subject to public disclosure unless specifically exempted by an act of our legislature." *News–Press Publishing Co., Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980). The Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be construed narrowly and limited to their stated purpose. *See Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986). "Absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and the damage to an individual or institution resulting from such disclosure." *Gadd*, 388 So. 2d at 278. Therefore, barring an applicable statutory exemption, records that are responsive to a public records request should be provided to the requestor. This right to access is also recognized in Article I, Section 24 of the Florida Constitution.

A. Public Records Are Not Limited To Written Documents

The term "public record" is not limited to traditional written documents. Section 119.011(12), Florida Statutes, sets forth an expansive definition for materials deemed to be public records.[1] The Florida Supreme Court has interpreted the statutory definition to encompass all materials made or received by an agency in connection with official business, which are used

[1] "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(12), Fla. Stat.

to perpetuate, communicate, or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). Therefore, "the form of the record is irrelevant ...." Op. Att'y Gen. Fla. 04-33 (2004); *see also National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009) ("public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form").

B. Drafts, Notes, Emails, and Text Messages Can Be Public Records

The term "public record" means any material, including a draft, note, email, or text messages, prepared in connection with official agency business, which is intended to perpetuate, communicate, or formalize knowledge of some type. *Shevin*, 379 So. 2d at 640. For example, in *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting.

II. Inspection and Copying of Public Records Cannot be Unreasonably Restricted

Section 119.07(1)(a) of the Florida Statutes establishes that "[e]very person who has custody of a public record shall permit the record to be inspected and copied *by any person* desiring to do so, *at any reasonable time, under reasonable conditions, and under supervision* by the custodian of the public records." (Emphasis added). The term "reasonable conditions" "refers not to conditions that must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). *See also State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905); *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S. Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction). Therefore, the right of inspection may not be frustrated or circumvented through indirect means. *State ex rel. Davidson v. Couch*, 158 So. 103, 105 (Fla. 1934) (the right of inspection was "hindered and obstructed" by the city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). Moreover, any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. *DePerte*, 105 S. Ct. at 2315.

A. Any Person Can Inspect and Copy Public Records

Any person can inspect and copy public records. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. Feb. 27, 1997); *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996) ("[A]s long as the citizens of this state

desire and insist upon 'open government' and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws."); *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. Dec. 17, 1991); *see also Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002).

B. The Public Record Requestor is not Required to Provide the Motive for Inspection

The requestor is not required to explain the purpose or reason for a public records request. "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act." *Curry*, 811 So. 2d at 742. *See also Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886 n.3 (Fla. 3d DCA 2005) ("generally, a person's motive in seeking access to public records is irrelevant"); *Gadd*, 388 So. 2d at 278 ("the newspaper's motives [for seeking the documents], as well as the hospital's financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act").

C. The City Has the Duty to Acknowledge Requests Promptly and Respond in Good Faith

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), Fla. Stat. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. *Id.*

D. The City Cannot Require a Public Records Request to be in Writing

The City may request but cannot require that requests for public records be in writing. *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305 n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"). A custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid. Op. Att'y Gen. Fla. 80-57 (1980).

E. The City Cannot Require the Requestor Disclose Identity or Background Information

A person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. Op. Att'y Gen. Fla. 92-38 (1992); Op. Att'y Gen. Fla. 91-76 (1991); *see also Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself).

F. The City is Not Required to Answer Questions About its Public Records or Create a New Record in Response to a Request for Information.

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. Section 119.07(1)(a) and (4), Fla. Stat. However, a custodian is not required to give out information from the records of his or her office. Op. Att'y Gen. Fla. 80-57 (1980). The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. Op. Att'y Gen. Fla. 92-38 (1992). However, an agency must respond to requests for information as to costs in order to comply with the public records request. *Wootton v Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991); *see also Woodard v. State*, 885 So. 2d 444, 445 n.1 (Fla. 4th DCA 2004) (remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records).

G. The City Must Provide a Copy of the Record in the Requested Medium if it Maintains the Record in that Medium.

1. Records Available in More than One Medium

The City must provide a copy of the record in the medium requested if it maintains the record in that medium, and the agency may charge a fee which shall be in accordance Section 119.01(2)(f), Fla. Stat. Thus, a custodian of public records must, if asked for a copy of a computer software disk used by the City, provide a copy of the disk in its original format. *See* Section 119.07(1), Fla. Stat.; Op. Att'y Gen. Fla. 91-61 (1991); *see also Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request).

2. Reformatting Records

As stated in *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983), the intent of the Public Records Act is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." Accordingly, the City is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. Op. Att'y Gen. Fla. 08-29 (2008).

H. The City Must Respond to a Public Records Request Within a Reasonable Time

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), Fla. Stat. The Public Records Act, however, does not contain a specific time limit for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted "is the limited reasonable time allowed the

custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Tribune Company*, 458 So. 2d at 1078; *see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998) (the court said that in view of the "nature and volume of the materials requested [over 9000 pages], their location, and the need for close supervision by some knowledgeable person of the review of those records for possible exemptions," the amount of time expended by the county to produce the records (several weeks) to opposing counsel was not unreasonable).

A municipal policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company*, 458 So. 2d at 1078-1079; *see also Michel v. Douglas*, 464 So. 2d 545, 546 n.2 (Fla. 1985), wherein the Florida Supreme Court noted that a county resolution imposing a 24-hour waiting period before allowing inspection of county personnel records which had been upheld in an earlier appellate decision was no longer enforceable in light of subsequent judicial decisions.

I. The City Must State the Basis for its Refusal to Release an Exempt Record

Section 119.07(1)(e), Florida Statutes, states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), Fla. Stat.; *see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) (agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption"); *Langlois v. City of Deerfield Beach, Florida*, 370 F. Supp. 2d 1233 (S.D. Fla. 2005) (city fire chief's summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records).

III. The City Can Lawfully Impose Certain Fees for Inspection and Copying of Public Records

Section 119.07(4)(d), Fla. Stat., authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. *See Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required). Op. Att'y Gen. Fla. 00-11 (2000).

The City of Coral Gables has enacted in its code a reciprocal ordinance.

Sec. 2-389. Fees for copies of ordinances and other records.

(a) In accordance with the provisions of F.S. § 119.07, with respect to public records requests, the city is permitted and shall charge an extensive research fee whenever extraordinary time constraint is designated by the person requesting copies or research of public records, requiring extraordinary expenditure of time by the city clerk's office or other city department acting as records custodian. To comply with the request, the city clerk or other city department acting as records custodian, shall collect the cost of providing such extraordinary services (i.e., the extensive research fee) in advance and in addition to the fees which shall be established by the city. For purposes of this section the term "extraordinary expenditure of time" shall mean 20 minutes or more. The extensive research fee shall be calculated using the hourly wage of the employee performing such services.

(b) The charges which shall be made for all statements, copies of documents, reports and certificates rendered by the offices of the city shall be in the amount established by the city commission.

(c) All such charges shall be paid into the city's general fund.

IV. Public Record Exemptions

This section sets forth many, but not all, exemptions from the public records.

A. Personnel Records

1. Personnel Records Generally

The general rule with regards to personnel records is the same as for other public records unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records; personnel records are subject to public inspection and copying under Section 119.07(1), Fla. Stat.; *see Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985). Therefore, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. Op. Att'y Gen. Fla. 94-75 (1994); Op. Att'y Gen. Fla. 94-54 (1994). Moreover, Section 69.081(8)(a), Fla. Stat, part of the Sunshine in Litigation Act, provides, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is "void, contrary to public policy, and may not be enforced." *See also* Inf. Op. to Barry, June 24, 1998.

2. Employment Search or Consultant Records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency, records made or received by the private company in connection with the search are public records. Op. Att'y Gen. Fla. 92-80 (1992); *see also Shevin*, 379 So. 2d at 633 (consultant firms hired to conduct an employment search for position of managing director of a public agency was

"acting on behalf of" a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of the search were public records).

3. Privacy Concerns

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. *See Michel*, 464 So. 2d at 546 (holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist). "Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees, as a general rule, do not have privacy rights in such records." *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 940 n.4 (Fla. 2002). *But see Fadjo v. Coon*, 633 F.2d 1172, 1175 n.3 (5th Cir. 1981) (noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy"). Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. *See e.g., Gadd*, 388 So. 2d at 278 (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure). Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989); *see also Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA 1990).

4. Collective Bargaining

a. Relationship of Collective Bargaining Agreements to Personnel Records

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. Op. Att'y Gen. Fla. 77-48 (1977). Thus, employee grievance records are disclosable 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." *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). Similarly, a city may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. Op. Att'y Gen. Fla. 94-75 (1994).

b. Collective Bargaining Work Product Exemption

Section 447.605(3), Fla. Stat., states that all work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of Section 119.07(1), Fla. Stat. The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, Fla. Stat. *See Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st

DCA 1980) (noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the Section 447.605(3) exemption); *see also Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer). Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions that reflect the impressions, strategies and opinions of the district representative are exempt pursuant to Section 447.605(3), Fla. Stat.; Inf. Op. to Fulwider, June 14, 1993.

5. Application of the Public Records Act to Specific Personnel Records

a. Annuity or Custodial Account Activities

Records identifying individual participants in any annuity contract or custodial account under Section 112.21, Fla. Stat. relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies and their personal account activities are confidential and exempt from Section 119.07(1), Fla. Stat. Section 112.21(1), Fla. Stat.

b. Applications for Employment, References, and Resumes

Applications and resumes are subject to disclosure after redaction of statutorily exempt information such as social security numbers. *See* 379 So. 2d at 633; Op. Att'y Gen. Fla. 77-48 (1977). Similarly, communications from third parties are subject to disclosure. *See Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982).

c. Complaints Against Employees

Like other personnel records, complaints alleging misconduct by employees are not exempt from disclosure in the absence of statutory exemption. *See, e.g.,* Op. Att'y Gen. Fla. 04-22 (2004)(anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). However, the Legislature has enacted statutes exempting certain complaints and the resulting investigative records from disclosure until the investigation is concluded.

For instance, complaints and other records in the custody of any agency that relates to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt until a finding of probable cause is made, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. Section 119.071(2)(g)(1)(a), Fla. Stat.

In addition, a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt until the investigation ceases to be active or until the

agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either: (a) concluded the investigation with a finding not to proceed with disciplinary action or file charges; or (b) concluded the investigation with a finding to proceed with disciplinary action or file charges. Section 119.071(2)(k)(1), Fla. Stat.[2]

i. Law Enforcement Officers and Correctional Officers

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. *See Cannella*, 438 So. 2d at 524, quashed on other grounds, 458 So. 2d 1075 (Fla. 1984); *Deperte*, 105 S. Ct. at 2315 (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency").

However, Section 112.533(2)(a), Fla. Stat., 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 or her 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. Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. Op. Att'y Gen. Fla. 93-61 (1993). However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991).

The exemption is of limited duration. Section 112.533(2), Fla. Stat., establishes that 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. Op. Att'y Gen. Fla. 95-59 (1995). Thus, a court ruled that 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. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000). 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 this information public prior to the conclusion of the investigation. Op. Att'y Gen. Fla. 95-59 (1995). 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." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

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. Section 112.533(2)(b), Fla. Stat. *See City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive,

[2] This provision was added to Section 119.071, Fla. Stat. through 2013 Fla. Sess. Law Serv. Ch. 2013-248 (C.S.H.B. 1075), and became effective on July 1, 2013.

despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness—especially, as here, where there is other record evidence which sustains it").

ii. Limitations On Disclosure

Section 112.533(2)(b), Fla. Stat., states that the inspection provisions in that subsection does not apply to any public record which is exempt from public disclosure under Ch. 119 of the Florida Statutes. For example, active criminal investigative or intelligence information which is exempt pursuant to Section 119.071(2)(c), Fla. Stat., remains exempt notwithstanding the disclosure provisions set forth in Section 112.533(2)(a), Fla. Stat. *Neumann*, 796 So. 2d at 1278; Op. Att'y Gen. Fla. 91-73 (1991). Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in Section 112.533(2), Fla. Stat. *Cf. City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status). Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt pursuant to Section 119.071(2)(h), Fla. Stat. *Neumann*, 763 So. 2d at 1181.

Section 112.533(4), Fla. Stat., 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 before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), Fla. Stat. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

d. Criminal History Information

Except where specific exemptions apply, criminal history information is a public record. Op. Att'y Gen. Fla. 77-125 (1977); Inf. Op. to Lymn, June 1, 1990. In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from Section 119.07(1), Fla. Stat., or use of the information is restricted. *See, e.g.*, Section 110.1127(3)(d) and (e), Fla. Stat. (positions in programs providing care to children, the developmentally disabled, or vulnerable adults, or positions having access to abuse records); Section 1002.36(7)(d), Fla. Stat. (School for the Deaf and the Blind); and Section 39.821, Fla. Stat. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection under Florida's Public Records Act. Op. Att'y Gen. Fla. 99-01 (1999).

Sections 943.0585 and 943.059, Fla. Stat., prohibits a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. Op. Att'y Gen. Fla. 94-49 (1994).

e. Deferred Compensation

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt. Section 112.215(7), Fla. Stat.

f. Direct Deposit

Direct deposit records made prior to October 1, 1986, are exempt from Section 119.07(1), Fla. Stat. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), Fla. Stat.

g. Drug Test Results

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with Section 112.0455, Fla. Stat., (the Drug-Free Workplace Act), are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), Fla. Stat. *See also* Section 112.0455(8)(l) and (u), Fla. Stat. While the provisions of Section 112.0455, Fla. Stat., are applicable to state agencies and not to municipalities, Section 440.101-440.102, Fla. Stat., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. *See* Op. Att'y Gen. Fla. 98-38 (1998). Section 440.102(8)(a), Fla. Stat., provides for confidentiality of drug test results or other information received as a result of a drug-testing program. *Cf.* Op. Att'y Gen. Fla. 94-51 (1994) (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to Section 440.102, Fla. Stat.); Inf. Op. to McCormack, May 13, 1997 (Section 440.102[8], Fla. Stat., applies to public employees and not to drug test results of public assistance applicants); *See also* Section 443.1715(3), Fla. Stat. (relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the unemployment compensation law). In Op. Att'y Gen. Fla. 96-58 (1996), the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to Section 401.265(2), Fla. Stat., which requires a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to Section 440.101-440.102, Fla. Stat.

h. Evaluations of Employee Performance

Evaluations of public employee performance, like other public records, are generally

subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977), no policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

i. Examination Questions and Answer Sheets

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), Fla. Stat.; *see Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [that] 'tested' the applicants' response both as to style and content").

The exemption from disclosure in section 119.071(1)(a) applies to examination questions and answers, but does not include the "impressions and grading of the responses" by the examiners. Section 119.071(1)(a), Fla. Stat; *Dickerson*, 543 So. 2d at 836. *See also* Op. Att'y Gen. Fla. 76-210 (1976), (stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed). However, the examinee possesses only the right to review his or her own completed examination and may not make or obtain copies of that examination. Op. Att'y Gen. Fla. 81-12 (1981).

j. Home Addresses, Telephone Numbers, Photographs, and Family Information

As a general rule, home addresses and telephone numbers of public officers and employees are not exempt from disclosure. *See* Op. Att'y Gen. Fla. 96-88 (1996) (home addresses, telephone numbers, business addresses, and telephone numbers of members of state and district human rights advocacy committees are public records); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files).

However, the home addresses and other personal information pertaining to certain current or former public officers and employees has been exempted by law. More specifically, Section 119.071(4)(d), Fla. Stat., exempts the home addresses, telephone numbers, photographs, and family information for certain public officers and employees as listed below. Section 119.071(4)(d), Fla. Stat., references the social security number for some of the designated employees. Section 119.071(4)(a), Fla. Stat., states that "social security numbers of all current and former agency employees held by the employing agency" are confidential and exempt. *See* Section 119.071(5)(a), Fla. Stat. (providing confidentiality for social security numbers held by an agency). The following current or former employees' personal records are exempt:

- The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel,

including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)(d)2.a.

- The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters. Fla. Stat. § 119.071(4)(d)2.b.

- Human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)(d)2.f.

- The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)2.(g).

- The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)2.(h).

- The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice

detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. Fla. Stat. § 119.071(4)2.i.

- The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel. Fla. Stat. § 119.071(4)2.j.

- The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. Fla. Stat. § 119.071(4)2.k.

- The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)2.l.

- The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children

of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges. Fla. Stat. § 119.071(4)(d)2.c.

- The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public. Fla. Stat. § 119.071(4)(d)2.e.

- Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate; Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and the name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate. Fla. Stat. § 119.071(5)(i).

- Current and former hospital employees. Section 395.3025(10), Fla. Stat.

- Domestic violence and other specified crime victims. Section 119.071(2)(j)(1), Fla. Stat.

The above list is not exhaustive; therefore, employees charged with reviewing and providing public records should consult Florida Statutes, Chapter 119 to determine whether an exemption applies for personal identifying information ***before such information is released.***

An agency that is the custodian of personal information specified in Section 119.071(4)(d)(1), Fla. Stat., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)(2), Fla. Stat. *See* Op. Att'y Gen. Fla. 97-67 (1997) (official records maintained by clerk of court); Op. Att'y Gen. Fla. 04-18 (2004) (applying exemption

when requested to petitions and campaign papers filed with supervisor of elections); Op. Att'y Gen. Fla. 04-20 (2004) (request submitted to property appraisers). The following officers/employees are exempt from the public record.

k. Retirees

The names and addresses of retirees are confidential and exempt from the provisions of Section 119.07(1), Fla. Stat., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except to a public agency engaged in official business. However, a state or local government agency may provide the names and addresses of retirees from that agency to a bargaining agent as defined in Section 447.203(12), Fla. Stat., or to a retiree organization for official business use. Lists of names or addresses of retirees may be exchanged by public agencies, but such lists shall not be provided to, or open for inspection by the public. Any person may view or copy any individual's retirement records at the Department of Management Services one record at a time, or may obtain information by a separate written request for a named individual for which information is desired.

l. Medical Records Exemption—Florida Statutes Section 119.071(4)

Section 119.071(4)(b) of the Florida Statutes states that medical records of any employee are confidential and cannot be disclosed. *Id.* As such, medical records are to be held confidential and may not be disclosed in response to any public records request. Moreover, the confidentiality requirement extends to any prospective, current, or former employee of a county, city, or municipality in Florida. *Id.* Furthermore, pursuant to Section 110.123(9), Fla. Stat., the medical records of a current or former employee's dependent are also confidential and exempt from Florida's Public Records law. Similarly, under Section 760.50(5), Fla. Stat., any information regarding an employee's medical status or medical condition should be kept confidential.

m. Medical Claims Exemption—Florida Statutes Section 112.08(7)

The confidentiality of medical records, as authorized in Section 112.08(7), Fla. Stat., extends to medical claims made by employees. Op. Att'y Gen. Fla. 94-78 (1994). Florida courts have analyzed the extent of Section 112.08(7) of the Florida Statute's application and concluded that it provides a broad exemption to the Public Records Law. *News-Press Pub. Co., Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987); Op. Att'y Gen. Fla. (2008). Accordingly, all medical records and medical claims records, including worker's compensation claims, held by the city are exempt from the public record and confidential. *Kaune*, 511 So. 2d at 1023. Thus, any and all claims made by employees, are confidential.

i. Notice of Injury Form—Florida Statutes Section 440.185

In relation to worker's compensation issues, please be advised that a "Notice of Injury" filed pursuant to Florida Statute Section 440.185 is not a medical record and as such is a public record even if medical information is contained in the Notice. Indeed, "the fact that medical

information is included in a document does not convert it to a medical record which is exempt from disclosure." Op. Att'y Gen. Fla. 90-88 (1990). In fact, the Attorney General noted that:

> The statute treats medical reports and records separately from Notice of Injury forms .... Thus, a distinction appears to have been made by the separate treatment of medical records and reports within the statute and there is no indication that the Legislature intended that a notice of injury form be treated as a medical report or record.

Id. Therefore, in providing a response to a public records request, any notice of injury form should be disclosed to the individual requesting such records.

Please bear in mind, however, that the Notice of Injury may contain confidential information that may require proper redaction. Fla. Admin. Code Ann. R. 69L-6.022. Indeed, any information contained in the Notice that would "identify an ill or injured employee" should be redacted. *Id.* Information identifying an ill or injured employee includes: name or signature; social security number; business, residence, and mailing addresses; and residence and business telephone numbers. *Id.* Accordingly, that information should be properly redacted from a Notice of Injury before the notice can be disclosed in response to a public records request.

n. Salary Records

Salary and other information relating to compensation are subject to disclosure. *Lewis v. Schreiber*, No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), *per curiam affirmed*, 611 So. 2d 531 (Fla. 4th DCA 1992). *Accord* Op. Att'y Gen. Fla. 73-30 (1973).

o. Undercover Personnel of Criminal Justice Agencies

Section 119.071(4)(c), Fla. Stat., provides that any information revealing undercover personnel of a criminal justice agency is exempt from public disclosure.

B. Security System Information and Blueprints

1. Security System Information and Plans

Information relating to the security systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, Fla. Stat. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such security systems or information. *Id.* The exemption extends to information relating to or revealing the security systems for property owned or leased by the state or its political subdivisions, and also to security information concerning privately owned or leased property which is in the possession of an agency. Op. Att'y Gen. Fla. 01-75 (2001); Op. Att'y Gen. Fla. 93-86 (1993). *See also* Section 331.22, Fla. Stat. (airport security plans); Section 311.13, Fla. Stat. (seaport security plans).

Section 119.071(3)(a), Fla. Stat., provides a similar exemption from disclosure for a security system plan of a private or public entity that is held by an agency. However, the information may be disclosed to the property owner or leaseholder as well as to another state or federal agency to prevent, detect, or respond to an attempted or actual act of terrorism or for prosecution of such attempts or acts. *Id.*

The term "security system plan" includes: records relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security manuals. *Id.*

Sections 281.301 and 119.071(3)(a), Fla. Stat., prohibit public disclosure of the names and addresses of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* Op. Att'y Gen. Fla. 04-28 (2004). *See also Times Publishing Company v. City of Pensacola*, No. 2002-2053 (Fla. 1st Cir. Ct. Nov. 13, 2002), *per curiam affirmed*, 869 So. 2d 547 (Fla. 1st DCA 2004) (police department records of "specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel" were exempt from disclosure under Section 119.071(3)(a), Fla. Stat.).

2. Security Issues Relating to Electronic Records

Section 119.01(2)(a), Fla. Stat., states that agencies "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." *See also* Rule 1B-26.003(6)(g)(3), F.A.C, adopted by the Division of Library and Information Services of Department of State pursuant to its records management rulemaking authority in Section 257.14, Fla. Stat. The rule states that "[i]n providing access to electronic records, agencies shall ensure that procedures and controls are in place to maintain confidentiality for information which is exempt from public disclosure." *Cf. Rea v. Sansbury*, 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this "does not mean that every means adopted by the county to facilitate the work of county employees ipso facto requires that the public be allowed to participate therein").

But see Op. Att'y Gen. Fla. 05-12 (2005) (city may not require use of a code to review e-mail correspondence of city police department and human services department). In addition, risk analysis information relative to security threats to data and information technology resources of an agency are confidential and exempt. Section 282.318(4)(c), Fla. Stat. Internal policies and procedures to assure the security of the data and information technology resources which, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources are confidential and exempt. Section 282.318(4)(d), Fla. Stat. Results of periodic audits and evaluations of a security program for an agency's data and information technology resources are confidential and exempt. Section 282.318(4)(f), Fla. Stat.

3. Blueprints

Section 119.071(3)(b)(1), Fla. Stat., exempts building plans, blueprints, schematic drawings, and diagrams of government buildings. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the building, or upon a showing of good cause to a court. Section 119.071(3)(b)(3), Fla. Stat.

Exempt documents may also be released in order to comply with competitive bidding requirements. Op. Att'y Gen. Fla. 02-74 (2002). However, the entities or persons receiving such information must maintain the exempt status of the doucments. *Id.*; *see* Section 119.071(3)(c)(1), Fla. Stat. (exemption for building plans, blueprints, schematic drawings and diagrams of various attractions, retail, resorts, offices, and industrial complexes and developments when the records are held by an agency). The exemption afforded by this statute does not apply to comprehensive plans, site plans, or amendments thereto that are submitted for approval or that have been approved under local land development regulations, local zoning regulations, or development of regional impact reviews. Section 119.071(3)(c)(4), Fla. Stat.

C. Other Protected Personal Identifying Information

1. Social Security Numbers

Section 119.071(5)(a)(5), Fla. Stat., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements; however, the exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. *See, e.g.*, Section 193.114(5), Fla. Stat. (social security number submitted on an application for a tax exemption is confidential); Section 119.071(4)(a), Fla. Stat. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure). *See* Section 119.0714, Fla. Stat. (regarding confidentiality of social security numbers in court records and in the Official Records).

Section 119.071(5)(a)(6), Fla. Stat., authorizes disclosure of social security numbers under certain conditions. Section 119.071(5)(a)(7)(b), Fla. Stat., states that an agency may not deny a commercial entity engaged in "commercial activity" as defined in the exemption, access to social security numbers, "provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers." "Commercial activity" does not include the display or bulk sale of social security numbers to the public, or the distribution of such numbers to any customer not identifiable by the commercial entity. Section 119.071(5)(a)(7)(a)(1), Fla. Stat. *See also* Op. Att'y Gen. Fla. 10-06 (2010) (stating that while Section 119.071(5)(a)(6) and (7), Fla. Stat., authorize the disclosure of social security numbers to commercial entities engaged in the commercial activities identified in the statute, these provisions authorize the agency holding social security numbers to request additional information that is reasonably necessary to verify the identity of the commercial entity, and the specific purposes for which the social security numbers will be used).

2. Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt. Section 119.071(5)(b), Fla. Stat.

3. Biometric identification information held by an agency is exempt. The term "biometric identification information" means: any record of friction ridge detail, fingerprints, palm prints, and footprints. Section 119.071(5)(g), Fla. Stat.

4. Motor Vehicle Records containing personal and/or highly restricted personal information, depending upon the context, may be both exempt and confidential under state and/or federal law. In Opinion Number 10-10, the Florida Attorney General analyzed the Driver's Privacy Protection Act of 1994 ("DPPA"), codified in 18 U.S.C. 2721 *et seq.*, as it relates to Florida's Public Records law and stated:

[P]ursuant to Section 119.0712(2), Fla. Stat., a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying whether that information[:] "a. was obtained from a statement by the owner of the driver's license; b. was obtained by the officer when viewing the driver's license; or c. was obtained from viewing a record of the Department of Highway Safety and Motor Vehicles." A driver's license number is "personal information" within the scope of Section 119.0712(2), Fla. Stat., and is confidential as it is held and maintained in a "motor vehicle record" by the Florida Department of Highway Safety and Motor Vehicles. This information continues to be confidential in the hands of local law enforcement for permissible uses within the scope of the statute and federal provisions. However, the statute does not reach to records created by local law enforcement, which may contain such personal information. Op. Att'y Gen. Fla. 10-10 (2010).

The DPPA defines "personal information" as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. § 2725(1).

D. Financial Records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. *See* Op. Att'y Gen. Fla. 96-96 (1996) (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

1. Audit Reports

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(a), Fla. Stat. The audit becomes final when the audit report is presented to a unit of local government. Until the audit becomes final, the audit work-papers and notes related to such audit report are

confidential. *Id.*; *see Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). The term "internal auditor" encompasses an official within county government who is responsible under the county code for conducting an audit. Op. Att'y Gen. Fla. 99-07 (1999).

2. Bids and Financial Statements

Section 119.071(1)(b)(2), Fla. Stat., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening, whichever is earlier. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation, and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)(3), Fla. Stat.

"Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07(1) and Section 24(a), Art. I of the State Constitution." Section 119.071(1)(c), Fla. Stat.

3. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974). The exemption afforded by Section 447.605(3), Fla. Stat., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden*, 340 So. 2d at 977. *See also* Op. Att'y Gen. Fla. 92-56 (1992) (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

E. Emergency Records

1. Emergency "911" Records

Section 365.171(12), Fla. Stat., exempts from the public records, and makes confidential any record, recording, or information, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications 911 system. Op. Att'y Gen. Fla. 90-43 (1990) (only that portion of 911 tape relating to name, address, and telephone number of the caller exempt).

A tape recording of a "911" call is a public record that is subject to disclosure after the deletion of the exempt information. Op. Att'y Gen. Fla. 93-60 (1993). This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. Op. Att'y Gen. Fla. 95-48 (1995); *see also* Inf. Op. to Fernez, Sept. 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

In addition, an audio recording that records the "killing of a person" is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 406.136, Fla. Stat.

2. Emergency Evacuation Plans

Section 119.071(3)(a), Fla. Stat., exempts from disclosure a security system plan of a private or public entity that is held by an agency. The term "security system plan" includes emergency evacuation plans and sheltering arrangements. Section 119.071(2)(d), Fla. Stat., exempts from disclosure "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, Chapter 23 [Florida Mutual Aid Act], and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies ...." Section 395.1056, Fla. Stat., exempts those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

3. Emergency Notification

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from disclosure requirements. Section 119.071(5)(j)(1), Fla. Stat. The e-mail addresses and corresponding home, school, and other "watched addresses of concern" provided for participation in the Florida

Department of Law Enforcement Offender Alert System are within the scope of this exemption. Op. Att'y Gen. Fla. 11-16 (2011).

4. Special Needs Registry

Records relating to the registration of persons with special needs (i.e., persons who would need assistance during evacuations and sheltering due to physical, mental, cognitive impairment, or sensory disabilities), are confidential and exempt, except such information is available to other emergency response agencies as determined by the local emergency management director. Section 252.355(5), Fla. Stat.

5. Sensitive Data Processing Software

Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 812.081, Fla. Stat., and agency-produced data processing software that is sensitive are exempt. Section 119.071(1)(f), Fla. Stat.

F. Investigative Records of Non-Law Enforcement Agencies

1. Ethics Investigations

The complaint and records relating to the complaint or to any preliminary investigation of the Florida Ethics Commission, a Commission on Ethics and Public Trust established by a county or municipality, or by a county or city that has established a local investigatory process to enforce more stringent standards as provided in Section 112.326, Fla. Stat., are confidential and exempt until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records be made public, or until the commission, county, or city determines whether probable cause exists. Section 112.324(2)(a) and (c), Fla. Stat.; *see also* Section 112.3215(8)(b) and (d), Fla. Stat. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, nothing in Section 112.324, Fla. Stat. provides confidentiality for similar or identical information in the possession of other agencies of government. Op. Att'y Gen. Fla. 96-05 (1996). Thus, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part III, Ch. 112, Fla. Stat., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate complaints of ethics violations. *Id.*

2. Local Government Inspector General Investigations

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2)(a), Fla. Stat. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id. Cf. Nicolai v. Baldwin,*

715 So. 2d 1161, 1163 (Fla. 5th DCA 1998) (noting that a draft audit report prepared by the clerk of court did not become "final" when it was reviewed by the county administrator; the report became "final" and subject to disclosure when presented to the county commission). Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. Section 119.0713(2)(a), Fla. Stat.

3. State Inspector General Investigations

Audit notes and reports of state agency inspectors general appointed in accordance with Section 20.055, Fla. Stat., are public records to the extent that they do not include information that has been made confidential and exempt from Section 119.07(1), Fla. Stat. Section 20.055(5)(b), Fla. Stat. However, Section 112.31901(2), Fla. Stat., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under Section 112.3189, Fla. Stat., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from Section 119.07(1), Fla. Stat. until the investigation ceases to be active, a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received—whichever first occurs. Section 112.31901(1), Fla. Stat. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), Fla. Stat. *Cf.* Section 943.03(2), Fla. Stat. (providing for confidentiality of Department of Law Enforcement records relating to an active investigation of official misconduct).

4. State Licensing Investigations

Pursuant to Section 455.225(10), Fla. Stat., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential and exempt from disclosure until 10 days after probable cause has been found to exist by the probable cause panel of the licensing board, by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality—whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and licensing boards within that department as provided in Section 456.073(10), Fla. Stat. Complaints filed by a municipality against a licensed professional are included within the confidentiality provisions. Op. Att'y Gen. Fla. 02-57 (2002). However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city relating to the nature of the alleged offense by the licensed professional. *Id.*

5. Whistle-Blower Investigations

Section 112.3188(1), Fla. Stat., provides that, with limited exceptions, for the confidentiality of the identity of a whistle-blower who discloses, in good faith, to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other

appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated, or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. A complainant may waive the right to confidential treatment of his or her name or identity. Op. Att'y Gen. Fla. 95-20 (1995). However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. Op. Att'y Gen. Fla. 96-40 (1996).

In order to qualify as a whistle-blower complaint, particular information must be disclosed to the statutorily designated officials. A general complaint of wrongdoing to officials other than those specifically named in Section 112.3188(1), Fla. Stat., does not entitle the complainant to whistleblower protection. Op. Att'y Gen. Fla. 98-37 (1998). *See also* Op. Att'y Gen. Fla. 99-07 (1999) (county inspector general qualifies as an "appropriate local official" for purposes of the whistle-blower law); Op. Att'y Gen. Fla. 96-40 (1996) (town ethics commission constitutes "appropriate local official" for purposes of processing complaints under the whistle-blower law).

Section 112.3188(2)(a), Fla. Stat., states that except as specifically authorized in Section 112.3189, Fla. Stat., all information received by the Chief Inspector General, an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations, or the Department of Law Enforcement, is confidential and exempt if the information is being received or derived from allegations as set forth in Section 112.3188(1)(a) or (b), Fla. Stat., and an investigation is "active" as defined by Section 112.3188(2)(c), Fla. Stat.

G. Law Enforcement Investigations

Arrest and crime reports are generally considered to be open to public inspection. Op. Att'y Gen. Fla. 91-74 (1991); Op. Att'y Gen. Fla. 80-96 (1980). However, statutory exemptions for active criminal investigative, intelligence information, confessions, juvenile offender records, and certain victim information may apply to crime reports and other law enforcement records.

1. Active Criminal Investigative and Intelligence Information is Exempt

All criminal intelligence and investigative information received by a criminal justice agency *prior to January 25, 1979,* is exempt from the public record. Section 119.071(2)(a)(d), Fla. Stat. To be exempt, the information must be active. *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). The purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. *See Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986). Criminal intelligence and investigative information is considered "active" as long as it is related to intelligence gathering or an ongoing investigation conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities, an arrest or prosecution in the

foreseeable future, or is directly related to pending prosecutions or appeals. Section 119.011(3)(d), Fla. Stat. An investigation will be deemed to be "active" even though there is no immediate anticipation of an arrest so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1016 (Fla. 4th DCA).

2. Confessions are Exempt

Any information revealing the substance of a confession of a person arrested is exempt until the criminal case is finally determined by adjudication, dismissal, or other final disposition. Section 119.071(2)(e), Fla. Stat.

3. The Identity of a Confidential Informant is Exempt

Information revealing the identity of a confidential informant or a confidential source is exempt from the public record. Section 119.071(2)(f), Fla. Stat.

4. The Identity and Other Personal Information of a Victim of a Crime is Exempt

Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime, and identifies that person as the victim of a crime, and the document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the public record.

5. Upon Written Request by a Sexual Battery, Child, or Domestic Violence Crime Victim, the Identity and Other Personal Information of Such Victim is Exempt

Any information not otherwise held confidential or exempt from Section 119.07(1), Fla. Stat. which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from Section 119.07(1), Fla. Stat. and Section 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Section 119.071(2)(j)(1), Fla. Stat.

6. Resource Inventories, Emergency Response Plans, Surveillance Techniques, and Procedures or Personnel are Exempt

Any information revealing surveillance techniques or procedures or personnel is exempt from the public record. In addition, any comprehensive inventory of state and local law enforcement resources and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency are exempt and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans. Section 119.071(2)(d), Fla. Stat.

7. Information Regarding Undercover Personnel is Exempt

Section 119.071(4)(c), Fla. Stat., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994) (police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released).

H. Litigation Records

1. Attorney-Client Communications

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege that exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979); *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985). The public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over the Florida Bar. *Miami Herald Publishing Company*, 468 So. 2d at 218.

2. Attorney Work Product

With the enactment of Section 119.071(1)(d), Fla. Stat., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. *See City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986) (where the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . . ."). Under the terms of the statute, the work product exemption "is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney." Section 119.071(1)(d)(2), Fla. Stat. *See also* Op. Att'y Gen. Fla. 94-77 (1994) (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation). The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims. *See State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990); *Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007) (rejecting a "continuing exemption" claim by the state). The phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007).

3. Criminal Cases

In a criminal case, the "conclusion of the litigation," for purposes of the termination of the work product exemption occurs when the conviction and sentence have become final. *State v. Kokal*, 562 So. 2d 324 (Fla. 1990). However, the state attorney may still claim the work product exemption for his or her current file in a pending motion for post-conviction relief because litigation is ongoing with respect to those documents. *See Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993) (state attorney not required to disclose information from a current file relating to a post-conviction relief motion). The Florida Supreme Court, however, has noted the state's obligation in a criminal case to "disclose any exculpatory document within its possession or to which it has access, even if such document is not subject to the public records law." *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, (1963). *Walton*, 634 So. 2d at 1062. *Accord Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

4. Other Statutory Exemptions Relating to Litigation Records

Section 768.28(16)(b), Fla. Stat., provides an exemption for claim files maintained by agencies pursuant to a risk management program for tort liability until the termination of all litigation and settlement of all claims arising out of the same incident. *See Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007) (stating that the phrase "settlement of all claims arising out of the same incident" included a legislative claims bill). The exemption afforded by Section 768.28(16), Fla. Stat., is limited to tort claims for which the agency may be liable under Section 768.28, Fla. Stat., and does not apply to federal civil rights actions under 42 U.S.C. § 1983. Op. Att'y Gen. Fla. 00-20 (2000); Op. Att'y Gen. Fla. 00-07 (2000). *See also Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. Oct. 11, 1995) (exemption now found at Section 758.28(16)(b), Fla. Stat., for risk management files did not apply to tapes, witness statements, and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp). *See also* Section 624.311(2), Fla. Stat. ("records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident"). A county's self-insured workers' compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998).

5. Attorney Notes

Relying on its holding in *Shevin*, 379 So. 2d at 633, the Florida Supreme Court recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Supreme Court held that documents that were preliminary guides created by attorneys intended to aid them later was not a public record. In *Johnson*, 713 So. 2d at 987, the "outlines, timelines, page notations regarding information in the record, and other similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. *See also Patton v. State*, 784 So. 2d 380, 389 (Fla. 2000). The underlying rationale of these decisions is that these materials were not intended to communicate, perpetuate, or formalize knowledge and therefore do not constitute public records.

6. Public Records Exemption Interplay with Sunshine Law

The Supreme Court of Florida has held that in the absence of a statute exempting a meeting in which privileged material is discussed, Section 286.011, Fla. Stat., may not be construed to contain any exceptions for such meetings. Section 119.07(7), Fla. Stat., clearly provides that an exemption from the Public Records Law does not imply an exemption from Section 286.011, Fla. Stat. The exemption from Section 286.011, Fla. Stat. must be expressly provided. Thus, exemptions from the Public Records Law do not, by implication, allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. Op. Att'y Gen. Fla. 12-20 (2012).

However, Section 286.011(8), Fla. Stat. allows a board to hold a confidential attorney-client meeting for the purposes of discussing strategy and settlement of pending litigation. These discussions are transcribed and made public once the litigation is concluded. 286.011(8)(e), Fla. Stat.