Records - sworn or civilian law enforcement personnel

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Subject:
Records - sworn or civilian law enforcement personnel

The Honorable Scott Ellis Mr. Charles Ian Nash
Clerk of the Circuit Court General Counsel
Brevard County Brevard County Sheriff's Office
Post Office Box 999 440 South Babcock Street
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Dear Mr. Ellis and Mr. Nash:

Thank you for considering the Attorney General's Office as a source for assistance in determining the continued validity of the conclusions reached in AGO 07-21 regarding the scope of the public records exemption for specified personal information pertaining to sworn or civilian law enforcement personnel now codified in s. 119.071(4)(d)2.a., F.S. Mr. Ellis states that he is relying on AGO 07-21 to deny the request by certain personnel employed by the sheriff's office for exempt status of their personal information as authorized by s. 119.071(4)(d)3., F.S., even though the sheriff's office has taken the position that these individuals are "civilian law enforcement personnel" for purposes of the exemption in that statute.

Prior to its amendment by Chapter 2012-149, Laws of Florida, several Attorney General Opinions had reviewed the scope of the prior legislative exemption for the home addresses, telephone numbers, and photographs of "law enforcement personnel." These opinions noted that the term "law enforcement personnel" was not defined in the exemption and strongly urged the Legislature to clarify the meaning of this term.

For example, in an opinion dated February 18, 1980, and issued to Comptroller Gerald A. Lewis, Attorney General Jim Smith observed that there was no definition of "law enforcement personnel" elsewhere in the statutes. The opinion went on to note that "this is one of those occasions, arising from time to time, when the statutory gaps are such as can be filled only be the exercise of lawmaking authority, which I do not possess."

Several years later, the Attorney General's Office was asked "what public officers or employees are included within the class 'law enforcement personnel' for purposes of the exemption." In an informal opinion to the Honorable Mary Morgan, issued September 28, 1992, the Attorney General's Office declined to provide a definitive answer to this question, in the absence of any statutory or commonly accepted definition of the term "law enforcement personnel" and strongly urged the Legislature to clarify the statute. The informal opinion recommended that agencies faced with implementing the provisions of the exemption could consider using the definition of "law enforcement officer" found in s. 784.07(1), F.S. (1992).

With the issuance of Attorney General Opinion 07-21, Attorney General McCollum addressed this issue and once again noted that the Legislature had not defined the term “law enforcement personnel.” The opinion recommended that “in the absence of legislative clarification, an agency should consider utilizing the definition in section 784.07(1)(a), Florida Statutes.” However, while the 1992 opinion characterized the response as “informal advisory comments,” AGO 07-21 also offered the more definitive finding that “support personnel . . . would not appear to be included.”

Accordingly, the question presented here is whether this conclusion remains valid in light of the fact that the Legislature amended the statute to add the terms “sworn or civilian” to the exemption. Because AGO 07-21 interpreted a different version of the statute, it is not controlling on this issue.

I hope that these informal comments have been helpful to you.

Sincerely,

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