Records, criminal investigative/intelligence info

Number: INFORMAL

Date: June 15, 2012

Subject:
Records, criminal investigative/intelligence info

The Honorable Douglas A. Valeska
District Attorney, 20th Judicial Circuit
Post Office Box 1632
Dothan, Alabama 36302

Dear Mr. Valeska:

You ask whether the exemption in section 119.071, Florida Statutes, for law enforcement records and investigative reports while a criminal case is pending is still applicable once the case has been resolved. You also ask whether such records would be exempt after the case has been disposed of for the purposes of a state or federal civil lawsuit.

Section 119.071(2)(c)1., Florida Statutes, exempts active criminal intelligence information and active criminal investigative information from public inspection.[1] The exemption is limited in scope; its 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.[2] In order for such information to be exempt from disclosure, however, the information must both be "active" and constitute either "criminal investigative" or "criminal intelligence" information.[3]

"Criminal intelligence information" is defined to mean information concerning "an identifiable person or group of persons collected by a criminal justice agency[4] in an effort to anticipate, prevent, or monitor possible criminal activity."[5] Such information is considered "active" as long "as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities" or "is directly related to pending prosecutions or appeals."[6]

"Criminal investigative information" is defined as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."[7] Such information is considered "active" as long "as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" or "is directly related to pending prosecutions or appeals."[8]

Certain information, however, is excluded from the definition of "criminal investigative information" or "criminal intelligence information" and thus would not be exempt from disclosure, regardless of whether active or not:

"1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Informations and indictments except as provided in s. 905.26."[9]

The court in *Woolling v. Lamar*,[10] held that a state attorney bore the burden of establishing that state attorney files in a nolle prossed case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption. I would also note by way of analogy that the courts have held that the limited attorney-client exemption which exists until the "conclusion of the litigation or adversarial administrative proceedings" only applies until the conclusion of the litigation or administrative proceedings even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims.[11]

Enclosed are several excerpts from the Government in the Sunshine Manual, discussing active criminal investigative and criminal intelligence information. You may access the manual online at: http://www.myfloridalegal.com/sun.nsf/sunmanual. You may access the Attorney General Opinions referenced therein on this office's searchable database of opinions at: http://myfloridalegal.com/opinions.

I trust that the enclosed information may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Director, Opinions Division

JW/tsh

Enclosures: Government in the Sunshine Manual, pp. 99-101

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[1] Criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, however, is exempt from disclosure provisions, regardless of

whether such information is active. *See* s. 119.071(2)(a), Fla. Stat. *And see* s. 119.071(2)(b), Fla. Stat., which does not limit the exemption for criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency made available to a Florida criminal justice agency only on a confidential or similarly restricted basis to active information, but provides that the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

[2] *See Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987).

[3] *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). *And see* Ops. Att'y Gen. Fla. 00-66 (2000) and 96-05 (1996).

[4] Section 119.011(4), Fla. Stat., defines "Criminal justice agency" to mean any law enforcement agency, court, prosecutor, or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections.

[5] Section 119.011(3)(a), Fla. Stat.

[6] Section 119.011(3)(d), Fla. Stat.

[7] Section 119.011(3)(b), Fla. Stat.

[8] Section 119.011(3)(d), Fla. Stat.

[9] Section 119.011(3)(c), Fla. Stat.

[10] 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

[11] *See State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990); *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); and *Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007), *cert. denied*, 553 U.S. 1059 (2008) (rejecting a "continuing exemption" claim by the state). *And see Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure would have a detrimental effect upon the agency's position in the related case).