# Records, investigative file on complaint

**Number:** INFORMAL

**Date:** December 13, 2006

**Subject:**
Records, investigative file on complaint

Mr. Glenn Theobald
Chief Counsel, Miami-Dade Police Department
Police Legal Bureau
9105 Northwest 25th Street
Miami, Florida 33172

Dear Mr. Theobald:

On behalf of the director of the Miami-Dade Police Department, you ask whether documents such as copies of the overtime slips of a law enforcement officer that are made part of the Internal Affairs file regarding an administrative complaint filed against the officer that could lead to discipline, demotion, or dismissal, are considered exempt from release until the investigation ceases to be active.

Section 112.533(2)(a), Florida Statutes, provides a complaint filed against a law enforcement officer with a law enforcement agency and all information obtained during the agency's investigation of the complaint, is confidential and exempt from the provisions of s. 119.07(1) until:

"1. The investigation ceases to be active, or
2. Until the agency head or designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has concluded the investigation with a finding not to proceed, or concluded the investigation with a finding to proceed with disciplinary action or to file charges."[1]

An exemption for investigative records while the investigation is active, however, does not generally exempt otherwise public records from disclosure simply because they are transferred to the investigating agency.[2] The Public Records Act, however, cannot be used to elicit exempt or confidential material.[3] Thus, this office stated in Attorney General Opinion 01-75 that the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of its investigation.

More recently, in Attorney General Opinion 06-04, this office concluded that the a utilities commission's records were subject to disclosure even though some of those records were provided to the Florida Department of Law Enforcement in the course of a criminal investigation by the department. This office, however, cautioned that the utilities commission may not identify which of its records have been provided to the Florida Department of Law Enforcement while

such records in the hands of that department constituted active criminal intelligence or investigative information.[4]

A similar situation would appear to be presented in the instant inquiry. Section 112.533(2), Florida Statutes, would prohibit an individual obtaining records from the internal investigation file while the investigation is active. However, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer's personnel file would not become confidential simply because copies of such records are being used in the investigation. The personnel department would be precluded from identifying those records gathered by the law enforcement agency in the course of its active internal investigation.

I trust that the above informal comments may be of assistance. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/fl

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[1] *See* s. 112.532(6), Fla. Stat., stating that except as provided therein no disciplinary action, demotion, or dismissal may be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of such allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

[2] *See, e.g.*, Op. Att'y Gen. Fla. 01-75 (2001) (exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because such records are transferred to a law enforcement agency).

[3] *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2nd DCA 1998) (Ch. 119, Fla. Stat. "may not be used in such a way to obtain information that the legislature has declared must be exempt from disclosure").

[4] *And see* Op. Att'y Gen. Fla. 96-27 (1996) (crime and incident reports that are open to the public are not converted into confidential records by s. 112.533, Fla. Stat., simply because the actions described in the crime report later formed the basis of a complaint filed pursuant to s. 112.533).