

Police internal affairs investigation records

Number: INFORMAL

Date: July 03, 2003

Subject:
Police internal affairs investigation records

Ms. Elizabeth M. Hernandez
Coral Gables City Attorney
City Hall
405 Biltmore Way
Coral Gables, Florida 33134

Dear Ms. Hernandez:

You state that your office has been asked to authorize the Coral Gables Police Department to purge or expunge documents it generated during an internal affairs investigation of a police officer in the department. The request has been made by an attorney for the Fraternal Order of Police on the basis that the investigation was improperly initiated against the officer based upon his activities as the president of that organization rather than his actions as a law enforcement officer.

The definition of "[p]ublic records" includes all documents "made or received pursuant to law or ordinance or in connection with the transaction of official business[.]"[1] The investigation was ostensibly conducted under the law enforcement agency's authority to conduct investigations into the conduct of its law enforcement officers. Thus, the records were generated while the agency was acting in its official capacity in performing what it considered to be its official duties. I am not aware of, nor have you drawn my attention to, any decision or authority that would permit a public agency to purge or expunge documents which it created while carrying out what it perceived to be its official duty based on an accusation that the agency may have been mistaken in such an assessment.

Accordingly, in the absence of a court order determining that such records are not public records within the meaning of Chapter 119, Florida Statutes, this office cannot conclude that the documents the municipal police department generated during an official internal investigation of a police officer in the department may be expunged. I would generally note that under the retention schedule adopted by the Department of State for law enforcement, the record copy of internal investigation records not sustained or unfounded is to be retained for one year.[2]

I trust that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] Section 119.011(1), Fla. Stat.

[2] General Records Schedule GS2 for Law Enforcement, Correctional Facilities, & District Medical Examiners, Department of State, Division of Library and Information Services, Bureau of Archives and Records Management, dated January 1999, item #136.