

Domestic violence, release of records to police

Number: INFORMAL

Date: December 18, 1995

Subject:
Domestic violence, release of records to police

The Honorable Bernie McCabe
State Attorney
Sixth Judicial Circuit
Post Office Box 5028
Clearwater, Florida 34618

Dear Mr. McCabe:

Thank you for considering the Attorney General's Office as a source for assistance regarding whether section 119.07(3)(s), Florida Statutes, authorizes you to release to a law enforcement agency a photograph and videotape you received during a criminal investigation of alleged domestic violence.

No criminal charges were filed as a result of the criminal investigation; however, the Tampa Police Department has asked for the materials for use in an internal affairs investigation being conducted pursuant to section 112.533, Florida Statutes. You state that because the photograph and videotape are of a crime victim, you are not certain whether section 119.07(3), Florida Statutes, permits you to release these documents to the police department for this purpose. Attorney General Butterworth has asked that I respond to your letter.

Section 119.07(3)(s), Florida Statutes, as amended by Chapters 95-320 and 95-398, Laws of Florida, provides as follows:

"Any document which 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, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from the provisions of s. 119.07(1) 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 the provisions of subsection (1) and s. 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. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section."

Section 112.533(1), Florida Statutes, requires that "[e]very law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person." In addition, an agency that employs law enforcement officers is statutorily required to conduct an internal investigation if it has cause to suspect that an officer is not in compliance with, or has failed to maintain compliance with section 943.13(4) or (7), Florida Statutes.[1] Moreover, a person employed as a law enforcement officer must not have been convicted of a felony or certain misdemeanors,[2] and such officers must "[h]ave a good moral character as determined by a background investigation under procedures established by the [Criminal Justice Standards and Training Commission]."[3]

The exemption from public disclosure afforded by section 119.07(3)(s), Florida Statutes, expressly states that "[a]ny state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section." In light of the statutory mandate that an internal investigation be conducted under specified circumstances, the police department would be authorized to obtain the documents in question if they are needed to complete the investigation.

Accordingly, it appears that your office is not prohibited by section 119.07(3)(s), Florida Statutes, from releasing the photograph and videotape to the police department if they are needed by that department to complete its internal investigation.

I trust that the above informal advisory comments may be of some assistance in resolving this matter.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tpg

[1] Section 943.1395(5), Fla. Stat. (1994 Supp.).

[2] Section 943.13(4), Fla. Stat. (1993).

[3] Section 943.13(7), Fla. Stat. (1993).