Law Enforcement Officers Bill of Rights

Number: INFORMAL

Date: August 02, 2007

Captain Nelson Andreu
West Miami Police Department
901 Southwest 62nd Avenue
West Miami, Florida 33144

Dear Captain Andreu:

Thank you for your letter of July 19, 2007, requesting assistance in determining whether the West Miami Police Department's system for the receipt and processing of complaints meets the statutory requirements of sections 112.532 and 112.533, Florida Statutes.

Part VI of Chapter 112, Florida Statutes, is commonly referred to as "The Police Officers' Bill of Rights" or "The Law Enforcement Officers' Bill of Rights," and is designed to ensure certain rights for law enforcement and correctional officers.[1] Florida courts have stated that Part VI, Chapter 112, Florida Statutes, applies only to "*intra* departmental interrogation and investigation, and [has] as its purpose the protection of subordinate officers from 'third degree' tactics by superior officers . . . ."[2]

Section 112.532(1), Florida Statutes, requires that whenever a law enforcement officer or correctional officer, as defined in sections 112.531(1) and (2), Florida Statutes, is under investigation and subject to interrogation by members of the employing agency for any reason that could lead to disciplinary action, demotion, or dismissal, the interrogation shall be conducted under the conditions prescribed by the statute.[3] Section 112.532, Florida Statutes, also sets forth other rights and privileges possessed by law enforcement officers and correctional officers, including the establishment of complaint review boards;[4] the right of law enforcement officers and correctional officers to bring civil suits;[5] the right of law enforcement officers or correctional officers to have notice of disciplinary action;[6] and the prohibition against retaliatory action being taken against law enforcement officers and correctional officers who exercise their rights.[7]

Section 112.533(1), Florida Statutes, provides 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." The requirements of the statute apply to complaints filed with the employing agency by any person, whether within or outside the agency.[8] This statute also provides that:

"A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential and exempt from the provisions of s. 119.07(1) until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges."[9]

Thus, the statute contemplates an integrated system for resolving complaints against law enforcement officers: receipt of the incoming complaint, an investigation of the substance of that complaint, and a determination of whether to proceed with disciplinary action or file charges.

Although section 112.532(2), Florida Statutes, establishes the composition of complaint review boards, it does not state when and how such boards should function.[10] Section 112.532(2), Florida Statutes, provides that:

"A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency or unit; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies or units having more than 100 law enforcement officers or correctional officers shall utilize a five-member board, with two members being selected by the administrator, two members being selected by the aggrieved officer, and the fifth member being selected by the other four members. The board members shall be law enforcement officers or correctional officers selected from any state, county, or municipal agency within the county. There shall be a board for law enforcement officers and a board for correctional officers whose members shall be from the same discipline as the aggrieved officer. The provisions of this subsection shall not apply to sheriffs or deputy sheriffs."

Despite uncertainty concerning the function of complaint review boards, it appears that the Legislature did not intend for persons outside the employing agency to participate in the investigation and formulation of initial findings concerning a complaint against a law enforcement officer.[11] The requirement that information generated by an investigation be kept confidential precludes the sharing of investigative material except with law enforcement agencies, correctional agencies, and state attorneys *conducting criminal investigations*.[12] In other words, the confidentiality requirements of Part VI, Chapter 112, Florida Statutes, would prevent the participation of officers from outside law enforcement agencies participating in resolving a complaint made against a law enforcement officer until the officer’s employing agency has made its initial findings.

I am enclosing copies of previously issued Attorney General Opinions construing sections 112.532 and 112.533, Florida Statutes. You may also wish to review additional opinions on our website: www.myfloridalegal.com. This website is a searchable database of Attorney General Opinions dating from 1974. I would strongly suggest that you discuss this matter with legal counsel for your police department who can give you the detailed legal advice you require.

This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The conclusions expressed herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosures

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[1] *See* s. 112.532, Fla. Stat., which provides that "[a]ll law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges . . . ." *And see* ss. 112.531(1) and (2), Fla. Stat., respectively defining "[l]aw enforcement officer" and "[c]orrectional officer."

[2] *See Longo v. City of Hallandale*, 42 Fla. Supp. 53, 57 (17th Cir. Broward Co., 1975), *affirmed*, 331 So. 2d 397 (Fla. 4th DCA 1976), *cert. denied*, 341 So. 2d 1080 (Fla. 1976); Op. Att'y Gen. Fla. 97-62 (1997). *Cf.,* Op. Att'y Gen. Fla. 86-26 (1986).

[3] *See* Ops. Att'y Gen. Fla. 86-91 (1986) and 75-41 (1975).

[4] Section 112.532(2), Fla. Stat.

[5] Section 112.532(3), Fla. Stat.

[6] Section 112.532(4), Fla. Stat.

[7] Section 112.532(5), Fla. Stat.

[8] *See* Op. Att'y Gen. Fla. 93-61 (1993).

[9] Section 112.533(2)(a), Fla. Stat.

[10] The courts and the Attorney General's Office have expressed frustration over the absence of any legislative direction regarding the type of system required by s. 112.533, Fla. Stat., and the failure of the Legislature to specify the procedures that should be established to carry out the statutory responsibility delegated by the state. *See, e.g., Ujcic v. City of Apopka*, 581 So. 2d 218 (Fla. 5th DCA 1991); Op. Att'y Gen. Fla. 76-38 (1976), Inf. Op. of February 28, 1997, to Chief Dennis R. White.

[11] *See* Op. Att'y Gen. Fla. 06-35 (2006).

[12] *See* s. 112.533(2)(c), Fla. Stat. *And see* Ops. Att'y Gen. Fla. 76-38 (1976) and 86-91 (1986) discussing the nature of complaint review boards.