

HB 0433

2004

1 A bill to be entitled
 2 An act relating to public records concerning law
 3 enforcement officers and correctional officers; amending
 4 s. 112.533, F.S.; providing that a law enforcement
 5 officer's or correctional officer's personal and private
 6 records that are in the possession of a law enforcement
 7 agency or correctional agency because of a complaint
 8 investigation are exempt from disclosure under the public
 9 records law; defining the term "personal or private
 10 record" for purposes of the exemption; providing for
 11 future legislative review and repeal; providing findings
 12 of public necessity; providing a contingent effective
 13 date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

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 17 Section 1. Subsection (2) of section 112.533, Florida
 18 Statutes, is amended to read:

19 112.533 Receipt and processing of complaints.--

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

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29 1. Concluded the investigation with a finding not to
 30 proceed with disciplinary action or to file charges; or

31 2. Concluded the investigation with a finding to proceed
 32 with disciplinary action or to file charges.

33
 34 Notwithstanding the foregoing provisions, the officer who is the
 35 subject of the complaint, along with legal counsel or any other
 36 representative of his or her choice, may review the complaint
 37 and all statements regardless of form made by the complainant
 38 and witnesses immediately prior to the beginning of the
 39 investigative interview. If a witness to a complaint is
 40 incarcerated in a correctional facility and may be under the
 41 supervision of, or have contact with, the officer under
 42 investigation, only the names and written statements of the
 43 complainant and nonincarcerated witnesses may be reviewed by the
 44 officer under investigation immediately prior to the beginning
 45 of the investigative interview.

46 (b)1. This subsection does not apply to any public record
 47 that ~~which~~ is exempt from public disclosure pursuant to s.
 48 119.07(3). In addition, any personal or private record produced
 49 by the accused officer at the request of the agency is
 50 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 51 of the State Constitution.

52 2. As used in this subsection, the term "personal or
 53 private record" means all written documents and other physical
 54 items or objects, including, but not limited to, personal
 55 telephone records, cellular telephone records, financial
 56 records, beeper and pager records, credit card and bank records,
 57 electronic mail records, and video and audio cassettes, or other

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58 objects made by or which are the property of the law enforcement
 59 officer or correctional officer and intended for or restricted
 60 to his or her use.

61 3. For the purposes of this subsection, an investigation
 62 shall be considered active as long as it is continuing with a
 63 reasonable, good faith anticipation that an administrative
 64 finding will be made in the foreseeable future. An investigation
 65 shall be presumed to be inactive if no finding is made within 45
 66 days after the complaint is filed.

67 (c) Notwithstanding other provisions of this section, the
 68 complaint and information shall be available to law enforcement
 69 agencies, correctional agencies, and state attorneys in the
 70 conduct of a lawful criminal investigation.

71 Section 2. Section 112.533(2)(b)1., Florida Statutes, is
 72 subject to the Open Government Sunset Review Act of 1995 in
 73 accordance with s. 119.15, Florida Statutes, and shall stand
 74 repealed on October 2, 2009, unless reviewed and saved from
 75 repeal through reenactment by the Legislature.

76 Section 3. The Legislature finds that it is a public
 77 necessity to exempt from public disclosure all information
 78 contained in the private or personal records of any law
 79 enforcement officer or correctional officer held by a law
 80 enforcement agency or correctional agency because of a complaint
 81 filed against the officer. The Legislature finds that it is good
 82 public policy to protect the personal and private records of law
 83 enforcement officers or correctional officers accused in a
 84 complaint filed with their law enforcement agency or
 85 correctional agency. The Legislature finds that protecting the
 86 confidentiality and preventing the disclosure of the information

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87 contained in the law enforcement officer's or correctional
88 officer's personal or private records will encourage accused
89 officers to fully cooperate with the law enforcement agency or
90 correctional agency with whom they are employed to quickly and
91 effectively resolve the complaint. The Legislature also finds
92 that the confidentiality and exemption from public disclosure
93 provided by this act prevents unnecessary and unwarranted
94 intrusion into the right of privacy of personal and sensitive
95 information about the officer and his or her family. Disclosure
96 of information in the officer's personal or private records may
97 also deter the collection of information integral to the
98 investigation of the complaint filed against the officer.
99 Therefore, the Legislature finds that any benefit that could
100 occur from public disclosure of the information in the personal
101 or private records of an accused law enforcement officer or
102 correctional officer is outweighed by the unwarranted intrusion
103 into the privacy of the officer and his or her family.

104 Section 4. This act shall take effect on the same date
105 that HB 431 or similar legislation takes effect, if such
106 legislation is adopted in the same legislative session or an
107 extension thereof and becomes law.