

By Senator Fasano

11-712-04

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

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

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

18 112.533 Receipt and processing of complaints.--

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

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

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

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2 Notwithstanding the foregoing provisions, the officer who is
3 the subject of the complaint, along with legal counsel or any
4 other representative of his or her choice, may review the
5 complaint and all statements regardless of form made by the
6 complainant and witnesses immediately prior to the beginning
7 of the investigative interview. If a witness to a complaint is
8 incarcerated in a correctional facility and may be under the
9 supervision of, or have contact with, the officer under
10 investigation, only the names and written statements of the
11 complainant and nonincarcerated witnesses may be reviewed by
12 the officer under investigation immediately prior to the
13 beginning of the investigative interview.

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

20 2. As used in this subsection, the term "personal or
21 private record" means all written documents and other physical
22 items or objects, including, but not limited to, personal
23 phone records, cellular telephone records, financial records,
24 beeper and pager records, credit card and bank records,
25 electronic mail records, and video and audio cassettes, or
26 other objects made by or which are the property of the law
27 enforcement officer and intended for or restricted to his or
28 her use.

29 3. For the purposes of this subsection, an
30 investigation shall be considered active as long as it is
31 continuing with a reasonable, good faith anticipation that an

1 administrative finding will be made in the foreseeable future.
2 An investigation shall be presumed to be inactive if no
3 finding is made within 45 days after the complaint is filed.

4 (c) Notwithstanding other provisions of this section,
5 the complaint and information shall be available to law
6 enforcement agencies, correctional agencies, and state
7 attorneys in the conduct of a lawful criminal investigation.

8 Section 2. Section 112.533(2)(b)1., Florida Statutes,
9 is subject to the Open Government Sunset Review Act of 1995 in
10 accordance with section 119.15, Florida Statutes, and shall
11 stand repealed on October 2, 2009, unless reviewed and saved
12 from repeal through reenactment by the Legislature.

13 Section 3. The Legislature finds that it is a public
14 necessity to exempt from public disclosure all information
15 contained in the private or personal records of law
16 enforcement officers held by a law enforcement agency because
17 of a complaint filed against the officer. The Legislature
18 finds that it is good public policy to protect the personal
19 and private records of law enforcement officers accused in a
20 complaint filed with their law enforcement agency. The
21 Legislature finds that protecting the confidentiality and
22 preventing the disclosure of the information contained in the
23 law officers personal or private records will encourage
24 accused officers to fully cooperate with the law enforcement
25 agency with whom they are employed to quickly and effectively
26 resolve the complaint. The Legislature also finds that the
27 confidentiality and exemption from public disclosure provided
28 by this act prevents unnecessary and unwarranted intrusion
29 into the right of privacy of personal and sensitive
30 information about the officer and his or her family.
31 Disclosure of information in the officer's personal or private

1 records may also deter the collection of information integral
2 to the investigation of the complaint filed against the law
3 enforcement officer. Therefore, the Legislature finds that any
4 benefit that could occur from public disclosure of the
5 information in the personal or private records of an accused
6 law enforcement officer is outweighed by the unwarranted
7 intrusion into the privacy of the law officer and his or her
8 family.

9 Section 4. This act shall take effect on the same date
10 that SB ____ or similar legislation takes effect, if such
11 legislation is adopted in the same legislative session or an
12 extension thereof and becomes law.

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15 SENATE SUMMARY

16 Provides an exemption from disclosure under the public
17 records law for a law enforcement officer's personal and
18 private records that are in the possession of a law
19 enforcement agency because of a complaint investigation.
20 Provides a definition for personal and private records.
21 Provides for future legislative review and repeal under
22 the Open Government Sunset Review Act of 1995. Provides a
23 finding of public necessity.
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