

By Senator Fasano

11-300-05

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 an effective date.

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

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.

1  
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(6). 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, 2010, 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 a law enforcement officer who is the  
20 subject of a complaint filed with the officer's law  
21 enforcement agency. The Legislature finds that protecting the  
22 confidentiality and preventing the disclosure of the  
23 information contained in the officer's personal or private  
24 records will encourage the accused officer to fully cooperate  
25 with the law enforcement agency with whom the officer is  
26 employed in order to quickly and effectively resolve the  
27 complaint. The Legislature also finds that the confidentiality  
28 and exemption from public disclosure provided by this act  
29 prevents unnecessary and unwarranted intrusion into the right  
30 of privacy of personal and sensitive information concerning  
31 the officer and his or her family. Disclosure of information

