

# OFFICE OF THE STATE ATTORNEY, EIGHTH JUDICIAL CIRCUIT

## Public Records Disclosure of Victims' Information or Records

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### Section 1: Statement of Policy

The Office of the State Attorney, Eight Judicial Circuit (State Attorney's Office), protects victims' privacy rights to the fullest extent of the law. The Florida Constitution, Article 1, Section 16, the Rights of Accused and of Victims (Section 16), is superior to, and supersedes, Florida Statute 119 et. Seq., and all other sections of Florida Statutory Law. Section 16 establishes rights of victims' privacy that conflict with Florida Statute 119 and other statutory provisions. Section 16 provides that victims have the following privacy rights:

- 1.1. The right to be free from intimidation, harassment, and abuse.
- 1.2. The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.
- 1.3. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

Further, Section 16 provides that:

The victim, the retained attorney of the victim, a lawful representative of the victim, or *the office of the state attorney upon request of the victim*, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority

with jurisdiction over the case, as a matter of right. . . . (Emphasis added)

Therefore, the State Attorney's Office adopts the policies that follow to protect the rights of victims while maintaining compliance with the public records laws of the State of Florida and Section 16. The State Attorney's Office will not disclose any victim's information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim without the written consent of the victim, or a court order requiring such disclosure.

## Section 2: Definitions

- 2.1. **“Victim”** is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term “victim” includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term “victim” does not include the accused. The terms “crime” and “criminal” include delinquent acts and conduct. “Victim” may include law enforcement officers. “Victim” as used in this policy does not include any business entity.
- 2.2. **“Defendant”** means the person named in a criminal complaint, an allegation of juvenile delinquency, or the Respondent in a petition for protection against violence of any kind.
- 2.3. **“Exemption”** means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I. of the State Constitution.
- 2.4. **“Requestor”** means the person or legal entity requesting public records from the State Attorney's Office.
- 2.5. **“Public records”** means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the

physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

2.6. **“Redact”** means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

2.7. **“Victim information or records”** includes but is not limited to:

- a. The victim’s name.
- b. The victim’s home, property, business or school address.
- c. Any location regularly frequented by the victim.
- d. The victim’s telephone numbers.
- e. The victim’s email addresses.
- f. The victim’s financial information of any description.
- g. The victim’s medical information of any description including the name of the victim’s physicians, or medical facility.
- h. The victim’s image.
- i. The image of any property owned by the victim that could be used to locate or identify the victim, or the victim’s family.
- j. The victim’s criminal history.
- k. Recordings of the victim’s voice.
- l. Any such information of any person so closely associated with the victim as to be reasonably likely reveal the victim’s information or records, such as a co-resident, parent, guardian, spouse, or life partner.

### **Section 3: General Findings regarding the Disclosure of Victim’s Information.**

- 3.1. Victim information or records is exempt from disclosure under the Florida Constitution if that information or records could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
- 3.2. Nothing within Section 16 addresses the methodology by which a victim shall be informed of a public records request requesting a victim's information or records.
- 3.3. Section 16 does not provide a methodology to settle a dispute between the victim, the State Attorney's Office and requestor regarding disclosure of a victim's information pursuant to Florida Statute 119 et. seq.

## **Section 4: General Policy**

### **4.1. Victim's Right to Records:**

- 4.1.1. Victims may request copies of his or her public records without regard to this policy.
- 4.1.2. The victim, or the victim's lawful representative, shall not be subject to the requirements of this policy.
- 4.1.3. No victim's request for public records of his or her own file shall be delayed because of this policy.
- 4.1.4. All victims shall be entitled to receive an electronic copy of any public record that will be or has been furnished to a requestor regarding the victim, upon the victim's request.
- 4.1.5. A victim may request printed copies of records; however, printing of records may be charged at the statutory rate. This provision may be waived by the State Attorney, Chief Assistant State Attorney, or the Executive Director.
- 4.1.6. All victims shall be informed of this policy.

### **4.2. Victim's Consent Required:**

- 4.2.1. The Policy of the State Attorney's Office is that no victim's information or record shall be released in response to a public records request without the written consent of the victim or a court order requiring such release.

4.2.2. If a public records request specifically states a request for the victim's information, then the State Attorney's Office will make a reasonable effort to contact the victim regarding the public records request.

4.3. Reading the Law and Constitution *in pari materia*:

4.3.1. All public records requests shall be read in a manner that is most consistent with both providing records to the requestor in a timely manner, and protecting the rights of a victim.

4.3.2. The policy of the State Attorney's office is to respond to all public records requests in a reasonable period of time.

4.3.2.1. The length of time that is reasonable to respond to a public records request must account for the time necessary to comply with Section 16.

**4.4. Victims to be Represented upon Request:**

4.4.1. If litigation regarding the rights of a victim occurs because of the State Attorney's Office's refusal to provide a victim's information or record in a public records response, the office of the state attorney upon request of the victim, will assert and seek enforcement of the victim's rights in Section 16 and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case.

## **5. Section 5: Procedures**

**5.1.1. No Victim information Requested:**

5.1.1.1. If a public records request does not include a request for the victim's information or records, the victim's information and records shall be excluded or redacted from the public records response.

5.1.1.2. When a request does not specifically state a request for the victim's information or records, the State Attorney's Office will respond to that request in the ordinary course of business pursuant to the State Attorney's Office public records policy.

5.1.2. Notification of Redacted or Exempted Information

5.1.2.1. When a victim's information is exempted or redacted the State Attorney's Office shall provide notice to the requestor that the victim's information or

records were exempted or redacted pursuant to Article 1, Section 16 of the Florida Constitution.

## **5.2. Requests for Victim's Information**

5.2.1. A public records request for “any and all” public records, or similar language, related to a person or a case does not specifically request the victim’s information or records.

5.2.2. In order to make a request that includes a victim’s information, the request must inform the State Attorney’s Office that, “This request includes a request for the victim’s information or records” or some other language sufficient to place the State Attorney’s Office on notice that the request includes the victim’s information or records.

## **5.3. Victim Notification of Public Records Request:**

5.3.1. The State Attorney’s Office shall make a reasonable effort contact the victim when a Requestor has requested the victim’s information or records.

5.3.1.1. Reasonable effort to contact the victim shall mean a letter to the victim’s last known home and work address, a phone call to the victim’s last known telephone numbers, and an email to the victim’s last known email addresses.

5.3.1.2. Reasonable effort shall not include the use of investigators or services such as “Accurint” to locate the victim.

5.3.2. The State Attorney’s Office shall provide the victim a form explaining the victim’s rights, and affording the victim an opportunity to assert the victim’s rights, or to permit the disclosure of the victim’s information.

5.3.2.1. That disclosure shall inform the victim that the State Attorney’s Office’s failure to disclose the victim’s information or records could result in litigation between the State Attorney’s Office and the Requestor to require such disclosure.

5.3.2.2. The notice shall inform the victim that the failure to respond to the request may result in disclosure of the victim’s information or record to the Requestor.

5.3.3. The State Attorney’s Office shall provide a written copy of the public records request to the victim or the victim’s lawful representative, or, if the request is not in writing, a written explanation of the public records request.

5.3.4. The State Attorney's Office will wait 30 days for the victim's response after notice has been provided to the victim regarding a public records request, unless the victim responds to the notice sooner.

5.3.5. When a Requestor requests a victim's information or records, the State Attorney's Office shall furnish notice to the Requestor, along with the acknowledgement of the public records request, that such request will extend the time for the State Attorney's Office to respond to the request by approximately sixty (60) days.

#### **5.4. Victim's Election of Rights**

5.4.1. The victim may choose either to assert his or her rights as to all, none, or some of the victim's information or records.

5.4.2. If the victim allows all information and records to be disclosed, the records shall be disclosed to the requestor in compliance with Florida Statute 119, and the policy of this office.

5.4.3. If the victim allows the disclosure of some, but not all, of the victim's information or records, the victim must specifically identify to the State Attorney's Office the information or records that the victim will permit to be disclosed.

5.4.4. The victim does not allow disclosure of any information or records, the State Attorney's Office shall so notify the requestor, and exempt and redact the victim's information and records in the State Attorney's Office's public records response.

#### **5.5. No Victim Response**

5.5.1. If the Requestor has specifically requested the victim's information or records, and the State Attorney's Office has been unable to contact the victim, or if contacted, the victim has not responded to that contact within 30 days from the date of contact, the public record request response shall be given to the requestor with all victim information and records redacted or exempted, and notifying the requestor that the victim did not respond or could not be located.

5.5.2. If the victim cannot be contacted, or if the victim has been contacted, and does not respond within 30 days of that contact, the State Attorney's Office will inform the requestor that the State Attorney's Office will not oppose the entry

of a court order requiring disclosure of the victim's information and records consistent with Florida Statute 119.