



## *Gypsy Cops in Florida—Your Department's Legal Right to Speak Up*

[Matt Dolan, Attorney](#)

December 2019

The national problem of “gypsy cops” is not a new one. Toxic officers engage in misconduct in one agency after another over the course of a career and, in the meantime, cost thousands of dollars in lawsuits and inflict damage to agency reputation and officer morale along the way. These officers leave one agency where they are widely known to be a serious problem only to find a new home with another agency where the behavior continues until it is time to move again.

Departments across Florida and across the nation are struggling to recruit qualified applicants to serve as law enforcement officers. This presents an opportunity for unqualified men and women to gain employment because agencies need “warm bodies”. This is particularly true when the applicant happens to already be a certified officer.

**One of the most significant factors aiding gypsy cops in finding employment is the unwillingness of past agency representatives to divulge facts that would disqualify the officer in the eyes of any reasonable background investigator or law enforcement leader.** Serious problems—in the form of frequent citizen complaints, disciplinary write-ups and suspensions—are often documented but not shared with new agencies considering hiring these officers.

So, why are agencies failing to cooperate with other departments engaged in background investigations on these officers? One of the most common refrains is that sworn personnel refuse to cooperate based on the advice of Human Resources or attorneys. There is an overwhelming, though often vague, fear that any cooperation whatsoever will result in costly lawsuits filed by the toxic officer in question.

However, **in the state of Florida, there is a statute in place that protects agencies from being held liable for communicating past performance issues to a potential employer *so long as* those statements are truthful and made in good faith in response to another agency's inquiry.**

The simple purpose of this legal article is to bring to the attention of agency leaders—and those who advise them—that this employer immunity protection is currently in place in the state of Florida. This article will briefly explain what the Florida statute means for law enforcement leaders throughout the state who would like to speak up in an effort to prevent gypsy cops from finding new law enforcement positions but are hampered by misplaced concerns regarding legal liability.

### **A Right to “Speak Up” Under Florida Law**

Employer immunity statutes at the state level vary dramatically. In Florida, the immunity is fairly straightforward in that truthful statements given in good faith are legally protected.

Under Fla. Stat. § 768.095:

*An employer who discloses information about a former or current employee to a prospective employer of the former or current employee upon request of the prospective employer or of the former or current employee is immune from civil liability for such disclosure or its consequences unless it is shown by clear and convincing evidence that the information disclosed by the former or current employer was knowingly false or violated any civil right of the former or current employee protected under chapter 760.<sup>1</sup>*

The other provisions in chapter 760 referenced above relate to unlawful employment practices such as discrimination on the basis of gender, race, etc. or actively blacklisting an individual by publicizing negative information absent the request of a prospective employer. Therefore, the immunity granted to law enforcement agencies allowing access to requested information pertaining to officer misconduct is *not* fundamentally affected by this chapters.

The key take-aways from the above statute are that **employers are protected when (1) they are responding to a specific request for information from a potential employer, (2) are honestly communicating in good faith and (3) do not veer into areas that are irrelevant to the inquiry, such as rumors and innuendo or gossip concerning an individual’s personal life.**

### **Knowing Florida Law and Addressing the Problem of Gypsy Cops**

**Fla. Stat. § 768.095 is a statute that agency leaders, city and county attorneys, HR professionals and background investigators should become familiar with as they look to hire officers from outside agencies.** Background investigators should consider informing representatives from other agencies about this law when inquiries regarding past employment only result in “*he worked here from 2015 until 2019, and that’s all I can tell you*”. Furthermore, **agency leaders should keep this statute in mind when making crucial decisions as to**

---

<sup>1</sup> Fla. Stat. § 768.095

**whether or not to divulge to another agency facts illustrating that the officer they are considering hiring is not fit to serve.**

Law enforcement is a high liability profession. *Managing* liability should be the goal rather than eliminating all liability, in light of the fact that liability can *never* be eliminated—especially if law enforcement professionals are actively engaged in activities which simultaneously serve to improve the safety of the community while increasing the risks that lawsuits (founded or unfounded) may result.

**As agency leaders in Florida consider their options and their ethical obligations when contacted by other departments that are considering hiring toxic officers, they should take time to consider what Florida state law actually says when it comes to honest, fact-based disclosures of past misconduct and poor performance.**

Refusing to cooperate in these background investigations may mean less work and, in some instances, less risk of a baseless lawsuit filed by a toxic officer that once worked for the department. But it may also mean that a bad apple who has no business serving as a law enforcement officer finds a new home, a new badge and a new opportunity to disgrace the profession.

### **About the Author**

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

His training courses include [\*Recruiting and Hiring for Law Enforcement\*](#), [\*Confronting the Toxic Officer\*](#), [\*Performance Evaluations for Public Safety\*](#), [\*Making Discipline Stick®\*](#), and [\*Supervisor Liability for Public Safety\*](#).