

By Senator Sebesta

20-821-00

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.07, F.S.; providing an exemption from
 4 public records requirements for certain public
 5 records provided to and compiled by a criminal
 6 justice agency which contain active
 7 investigative information or active criminal
 8 intelligence information; providing an
 9 exemption for any court process used to secure
 10 such information; providing an exemption for
 11 such agency's records which are related to any
 12 complaint making, or any inquiry or
 13 investigation by the agency into allegations of
 14 misconduct or crimes committed by a public
 15 servant and any court process used to secure
 16 such records for a period not to exceed 3 years
 17 after the conclusion of the active criminal
 18 investigation; providing for future review and
 19 repeal; providing a finding of public
 20 necessity; providing an effective date.

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

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 24 Section 1. Paragraph (c) of subsection (3) of section
 25 119.07, Florida Statutes, is amended and paragraphs (dd) and
 26 (ee) are added to that subsection to read:

27 119.07 Inspection, examination, and duplication of
 28 records; exemptions.--

29 (3)

30 (c) Any information revealing the identity of a
 31 confidential informant or a confidential source is exempt from

1 the provisions of subsection (1) and s. 24(a), Art. I of the
2 State Constitution. As used in this paragraph, the term
3 "confidential informant" includes, but is not limited to, any
4 officer or employee of the state or any political subdivision
5 thereof who provides information regarding suspected criminal
6 violations committed by a public servant as defined in s.
7 838.014.

8 (dd) Any public record or copy of a public record that
9 is provided to, seized by, transferred to, secured by reason
10 or subpoena or warrant by, or otherwise compiled by a criminal
11 justice agency and that is active criminal investigative
12 information or active criminal intelligence information, and
13 any subpoena duces tecum, warrant, or court process used by a
14 criminal justice agency to secure such records or copies or
15 other investigative documents, are exempt, for purposes of
16 responding to any public records request made upon the
17 criminal justice agency, from the provisions of subsection (1)
18 and s. 24(a), Art. I of the State Constitution.

19 (ee) Any record compiled or generated by a criminal
20 justice agency by reason of or related to any complaint
21 making, or any inquiry or investigation by the criminal
22 justice agency into, allegations of misconduct or crimes
23 committed by a public servant as defined in s. 838.014, or any
24 subpoena duces tecum, warrant, or court process used by a
25 criminal justice agency to secure such records or copies or
26 other investigative documents, is exempt from the provisions
27 of subsection (1) and s. 24(a), Art. I of the State
28 Constitution for a period not to exceed 3 years after the
29 conclusion of the active criminal investigation.

30 Section 2. Section 1 is subject to the Open Government
31 Sunset Review Act of 1995 in accordance with section 119.15,

1 Florida Statutes, and shall stand repealed on October 2, 2005,
2 unless reviewed and saved from repeal through reenactment by
3 the Legislature.

4 Section 3. Investigations of alleged misconduct by
5 public officials often carry with them high interest by the
6 press and media. The Legislature recognizes that often such an
7 investigation requires the compilation of public records
8 documents from other public entities. Frequently, criminal
9 investigative agencies holding such records receive requests
10 under the public records law for copies of all such records.
11 Also, law enforcement agencies create an investigative file
12 that becomes a public record when the case becomes inactive.
13 The disclosure of both of these types of records, those
14 obtained from other public entities and those created by law
15 enforcement, allows confidential aspects of an ongoing
16 criminal investigation to be discerned by the person making
17 the public records request. As a result, the complainant's
18 name is often publicized and the complainant can easily become
19 victim to recrimination from the subject of the complaint.
20 Perceptions of such victimization create a strong disincentive
21 to report public misconduct. Also, dealing with such requests
22 diverts criminal investigators from their investigation, since
23 they have to assist in preparing the investigative agency's
24 response to the public records request. The Legislature
25 believes that records in the possession of an originating
26 agency should always remain public records. Public records or
27 copies of public records that have been compiled by a criminal
28 investigative agency as part of an ongoing investigation
29 should be exempt from public disclosure in order to promote
30 more effective investigative efforts by helping to ensure that
31 elements of the investigation are not made public while the

1 investigation is pending and by assuring that investigators
2 can continue working on the investigation instead of taking
3 time to respond to numerous public records requests. As a
4 public policy, this state should encourage persons to report
5 any allegations of criminal activity by public servants and
6 should foster an atmosphere in which those considering whether
7 to come forward with their concerns are assured that their
8 identities will remain confidential if needed. The Legislature
9 intends that potential complainants be placed on notice that
10 their identities will remain confidential as a means of
11 encouraging reports of wrongdoing. The Legislature intends to
12 exempt information revealing the identity of a confidential
13 informant from public disclosure. The Legislature recognizes
14 that such persons already may be considered confidential
15 informants under the existing law, but believes specifically
16 that listing the persons will serve to assure potential
17 complainants that they are, in fact, confidential informants.
18 The Legislature finds that in the federal system there are
19 significantly more options to prevent disclosure of records
20 generated by a criminal justice agency when investigating
21 public corruption. Federal criminal justice entities have no
22 requirement to disclose documents that they produce or
23 collect, regardless of whether the criminal investigation is
24 inactive and regardless of whether the investigation results
25 in criminal charges. Consequently, federal criminal justice
26 agencies are the first choice for reporting public corruption
27 because the public rightly believes that their identities are
28 best protected under the federal scheme. The Legislature
29 intends that documents produced by a criminal justice agency
30 be exempt from disclosure for 3 years from the date the case
31 becomes inactive, even if charges are not filed. Such a

1 provision provides greater assurances of protection from
2 retaliation to those who wish to report public corruption and
3 will allow Florida criminal justice agencies to better enforce
4 the law against the state's public servants. The Legislature
5 believes that a 3-year period of protection will allow a
6 reasonable time for agencies to prevent disclosure of
7 information that an agency believes may become relevant if a
8 subsequent allegation surfaces. The Legislature believes that
9 these exemptions strike the best balance between the public's
10 right of access to public agency files and the need to
11 maintain an appropriate level of confidentiality of
12 allegations even after investigative efforts have been
13 concluded.

14 Section 4. This act shall take effect July 1, 2000.

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17 SENATE SUMMARY

18 Provides an exemption from public records requirements
19 for certain public records provided to and compiled by a
20 criminal justice agency which contain active
21 investigative information or active criminal intelligence
22 information. Provides an exemption for any court process
23 used to secure such information. Provides an exemption
24 for such agency's records that are related to any
25 complaint making, any inquiry or investigation by the
26 agency into allegations of misconduct or crimes committed
27 by a public servant, and any court process used to secure
28 such records for a period not to exceed 3 years after the
29 conclusion of the active criminal investigation. Provides
30 for future review and repeal. Provides a finding of
31 public necessity.