

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1152  
 SPONSOR: Senator Klein  
 SUBJECT: Public Records Exemption/Sealed Investigative Incident Reports  
 DATE: February 13, 2002 REVISED: 02/18/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1152 would create a public records exemption for investigative incident reports that are ordered sealed by a court (similar to the current exemption for sealed criminal history records). Such sealed investigative incident reports would only be available to the subject of the report, his or her attorney, law enforcement agencies for their respective criminal justice purposes, or to certain other specified agencies for their respective licensing and employment purposes (law enforcement, the Florida Bar, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities if the subject of the record is applying to work with children, the developmentally disabled, or the elderly).

The bill would make it is a first degree misdemeanor to divulge the existence of a sealed investigative incident report, except to the previously specified entities for licensing or employment purposes.

This bill would create section 943.0596 of the Florida Statutes.

**II. Present Situation:**

Article I, s. 24 of the Florida Constitution expresses Florida’s public policy regarding access to government records in providing:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the

legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24 of the Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The definition of "criminal history record" in s. 943.045, F.S., includes notations of arrests, detentions, indictments, informations, or other formal criminal charges and dispositions. It does not include investigative activity contained in an investigative incident report that does not result in an arrest or in criminal charges being filed.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE, on the other hand, is required to retain expunged records. When a record is sealed it is not destroyed, but access is limited to

the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment (law enforcement; the Florida Bar; or working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities), petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.

### **III. Effect of Proposed Changes:**

Senate Bill 1152 would create a public records exemption for investigative incident reports that are ordered sealed by a court (similar to the current exemption for sealed criminal history records). Such sealed investigative incident reports would only be available to the subject of the report, his or her attorney, law enforcement agencies for their respective criminal justice purposes, or to certain other specified agencies for their respective licensing and employment purposes (law enforcement, the Florida Bar, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities if the subject of the record is applying to work with children, the developmentally disabled, or the elderly).

The bill would make it is a first degree misdemeanor to divulge the existence of a sealed investigative incident report, except to the previously specified entities for licensing or employment purposes.

The exemptions created by the bill would be repealed October 2, 2007, and would be reviewed by the Legislature before that date in accordance with the Open Government Sunset Review Act of 1995.

The bill would also provide a public necessity statement supporting the exemption by stating that the Legislature finds that the public policy related to the newly created statute allowing investigative incident reports to be sealed would best be served if the confidentiality of such reports is maintained and released only for the limited purpose of licensing or employment.

The effective date of the bill would be October 1, 2002, the same effective date as SB 1154, which is the bill that would create the new statute authorizing the sealing of investigative incident reports.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

This bill would create a public records exemption for a sealed investigative incident report, except as otherwise provided by law (the report would only be available to the subject of the report, his or her attorney, law enforcement agencies for their respective criminal justice purposes, or to certain other specified agencies for their respective licensing and employment purposes).

The bill appears to meet the requirements of Art. I, s. 24 of the Florida Constitution in that it states with specificity the public necessity justifying the exemption, it relates to only one subject, and it appears to be no broader than necessary to accomplish the stated purpose of the law.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

A technical amendment is recommended on page 3, line 23 to add the bill number of the “linked” bill, SB 1154, to the contingent effective date language.

**VII. Related Issues:**

Senate Bill 1154 is the bill “linked” to this bill in that it would authorize law enforcement investigative incident reports to be sealed.

**VIII. Amendments:**

#1 by Criminal Justice:

Technical amendment that adds the bill number of the “linked” bill, SB 1154, to the contingent effective date language.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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