

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 433 W/CS

Law Enforcement Officers Public Records Exemption

SPONSOR(S): Gibson, H.

TIED BILLS: HB 431

IDEN./SIM. BILLS: SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	7 Y, 0 N	Cole	De La Paz
2) Public Safety & Crime Prevention	16 Y, 0 N w/CS	Cole	De La Paz
3) State Administration			
4)			
5)			

SUMMARY ANALYSIS

Current law provides a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement officers. Current law also provides that any complaint against an officer and all information obtained during that investigation must remain confidential until the investigation is complete. Currently, all personal records of an officer submitted to an internal affairs investigator at the request of the agency, become public record after 45 days of the filing of the complaint.

This CS expands the exemption to also include personal telephone records, cellular telephone numbers, electronic pager records, financial records, credit card and bank records, electronic mail records, video and audio cassettes and other objects made by, or that belong to the officer in question and are intended for or restricted to his or her use, and the records are provided at the request of the agency during an internal investigation resulting from a filed complaint against the officer. These records are still available for criminal proceedings under the subpoena power of the court.

This CS provides for future review and repeal of the exemption, and provides a statement of public necessity.

This CS does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0433b.ps.doc

DATE: February 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current law provides a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel.¹ Current law also provides that if a complaint is filed against an officer that the complaint and all information gained during the complaint investigation be exempt from public records requests until the investigation is complete. If a finding has not been made within 45 days of the complaint being filed, the investigation is deemed inactive and all of the information gained up until that point during the investigation would be public record. An agency that is the custodian of such information is only required to maintain the exempt² status of the information if the officer or employing agency submits a written request to the custodial agency.

This CS expands the current exemption to also include personal telephone records, cellular telephone numbers, electronic pager records, financial records, credit card and bank records, electronic mail records, video and audio cassettes made by, or that belong to, the officer in question and are intended for or restricted to his or her use, when that officer is providing such records at the request of the agency during the investigation of a complaint against the officer. These records are still available for criminal proceedings under the subpoena power of the court.

This CS provides for future review and repeal and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1: Amends S. 112.533, F.S. relating to public records exemptions for law enforcement officers records.

Section 2: Amends S. 112.533 (2)(b)1, F.S. relating to a sunset review.

Section 3: Relates to the public records exemption necessity for these records.

Section 4: Creates an effective date.

¹ Section 112.533 (2)(a) and 119.07(3)(i), F.S.

² There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

There does not appear to be any fiscal impact on state or local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995³ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Public Safety & Crime Prevention Committee adopted an amendment that deleted language exempting "other physical items or objects, including , but not limited to," to alleviate concerns about the public records exemption being too broad. This amendment now makes only specific records provided by officers under investigation confidential, narrowly tailoring the public records exemption.

³ Section 119.15, F.S.