

Bill No. SB 1346

Barcode 112144

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Villalobos) recommended the following amendment:

Senate Amendment

On page 1, line 25, through page 8, line 23, delete those lines

and insert:

Section 1. Subsection (1) and paragraph (f) of subsection (2) of section 119.01, Florida Statutes, are amended to read:

119.01 General state policy on public records.--

(1)(a) It is the policy of this state, consistent with s. 24(a), Art. I of the State Constitution, that all state, county, and municipal 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 are open for personal inspection and copying by any person unless:

- 1. The record is exempt by statute;
- 2. The record is confidential and exempt by statute;
- 3. Access to the record is limited by court rule in

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1 effect as of November 3, 1992, unless the rule or a provision
2 of the rule has been repealed;

3 4. Access to the record is limited by legislative rule;
4 or

5 5. The record is confidential pursuant to the State
6 Constitution.

7 (b) It is the responsibility of the Legislature to
8 provide laws governing the enforcement of the right of any
9 person to inspect or copy public records, including the
10 maintenance, control, destruction, disposal, and disposition
11 of public records.

12 (c) It ~~Providing access to public records~~ is a duty of
13 each agency to provide access to public records.

14 (2)

15 (f) Each agency that maintains a public record in an
16 electronic recordkeeping system shall provide to any person,
17 pursuant to this chapter, a copy of any public record in that
18 system which is not exempted by law from public disclosure or
19 made confidential by the State Constitution. An agency must
20 provide a copy of the record in the medium requested if the
21 agency maintains the record in that medium, and the agency may
22 charge a fee in accordance with this chapter. For the purpose
23 of satisfying a public records request, the fee to be charged
24 by an agency if it elects to provide a copy of a public record
25 in a medium not routinely used by the agency, or if it elects
26 to compile information not routinely developed or maintained
27 by the agency or that requires a substantial amount of
28 manipulation or programming, must be in accordance with s.
29 119.07(4).

30 Section 2. Section 119.011, Florida Statutes, is
31 amended to read:

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1 119.011 Definitions.--As used in this chapter, the
2 term:

3 (1) "Actual cost of duplication" means the cost of the
4 material and supplies used to duplicate the public record, but
5 does not include labor cost or overhead cost associated with
6 such duplication.

7 (2) "Agency" means any state, county, district,
8 authority, or municipal officer, department, division, board,
9 bureau, commission, or other separate unit of government
10 created or established by law including, for the purposes of
11 this chapter, the Commission on Ethics, the Public Service
12 Commission, and the Office of Public Counsel, and any other
13 public or private agency, person, partnership, corporation, or
14 business entity acting on behalf of any public agency.

15 (3) "Confidential and exempt" means information that
16 is protected by an exemption, that is not subject to
17 inspection, and that may be released only as specified by law.

18 ~~(4)~~(3)(a) "Criminal intelligence information" means
19 information with respect to an identifiable person or group of
20 persons collected by a criminal justice agency in an effort to
21 anticipate, prevent, or monitor possible criminal activity.

22 (b) "Criminal investigative information" means
23 information with respect to an identifiable person or group of
24 persons compiled by a criminal justice agency in the course of
25 conducting a criminal investigation of a specific act or
26 omission, including, but not limited to, information derived
27 from laboratory tests, reports of investigators or informants,
28 or any type of surveillance.

29 (c) "Criminal intelligence information" and "criminal
30 investigative information" shall not include:

31 1. The time, date, location, and nature of a reported

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1 crime.

2 2. The name, sex, age, and address of a person
3 arrested or of the victim of a crime except as provided in s.
4 119.071(2)(h).

5 3. The time, date, and location of the incident and of
6 the arrest.

7 4. The crime charged.

8 5. Documents given or required by law or agency rule
9 to be given to the person arrested, except as provided in s.
10 119.071(2)(h), and, except that the court in a criminal case
11 may order that certain information required by law or agency
12 rule to be given to the person arrested be maintained in a
13 confidential manner and exempt from the provisions of s.
14 119.07(1) until released at trial if it is found that the
15 release of such information would:

16 a. Be defamatory to the good name of a victim or
17 witness or would jeopardize the safety of such victim or
18 witness; and

19 b. Impair the ability of a state attorney to locate or
20 prosecute a codefendant.

21 6. Informations and indictments except as provided in
22 s. 905.26.

23 (d) The word "active" shall have the following
24 meaning:

25 1. Criminal intelligence information shall be
26 considered "active" as long as it is related to intelligence
27 gathering conducted with a reasonable, good faith belief that
28 it will lead to detection of ongoing or reasonably anticipated
29 criminal activities.

30 2. Criminal investigative information shall be
31 considered "active" as long as it is related to an ongoing

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1 investigation which is continuing with a reasonable, good
2 faith anticipation of securing an arrest or prosecution in the
3 foreseeable future.

4

5 In addition, criminal intelligence and criminal investigative
6 information shall be considered "active" while such
7 information is directly related to pending prosecutions or
8 appeals. The word "active" shall not apply to information in
9 cases which are barred from prosecution under the provisions
10 of s. 775.15 or other statute of limitation.

11 ~~(5)(4)~~ "Criminal justice agency" means:

12 (a) Any law enforcement agency, court, or prosecutor;

13 (b) Any other agency charged by law with criminal law
14 enforcement duties;

15 (c) Any agency having custody of criminal intelligence
16 information or criminal investigative information for the
17 purpose of assisting such law enforcement agencies in the
18 conduct of active criminal investigation or prosecution or for
19 the purpose of litigating civil actions under the Racketeer
20 Influenced and Corrupt Organization Act, during the time that
21 such agencies are in possession of criminal intelligence
22 information or criminal investigative information pursuant to
23 their criminal law enforcement duties; or

24 (d) The Department of Corrections.

25 ~~(6)(5)~~ "Custodian of public records" means the elected
26 or appointed state, county, or municipal officer charged with
27 the responsibility of maintaining the office having public
28 records, or his or her designee.

29 ~~(7)(6)~~ "Data processing software" means the programs
30 and routines used to employ and control the capabilities of
31 data processing hardware, including, but not limited to,

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1 operating systems, compilers, assemblers, utilities, library
2 routines, maintenance routines, applications, and computer
3 networking programs.

4 ~~(8)(7)~~ "Duplicated copies" means new copies produced
5 by duplicating, as defined in s. 283.30.

6 (9) "Exempt" means information that is protected by an
7 exemption and that is not subject to inspection; however, a
8 custodian of public records is not prohibited from releasing
9 such information in all circumstances. The decision to release
10 exempt information must be based on a statutory provision or a
11 substantial policy need for disclosure or must be for a reason
12 that is consistent with the public purpose of the exemption.

13 ~~(10)(8)~~ "Exemption" means a provision of general law
14 which provides that a specified record or meeting, or portion
15 thereof, is not subject to the access requirements of s.
16 119.07(1), s. 286.011, or s. 24, Art. I of the State
17 Constitution.

18 ~~(11)(9)~~ "Information technology resources" means data
19 processing hardware and software and services, communications,
20 supplies, personnel, facility resources, maintenance, and
21 training.

22 ~~(12)(10)~~ "Proprietary software" means data processing
23 software that is protected by copyright or trade secret laws.

24 ~~(13)(11)~~ "Public records" means all documents, papers,
25 letters, maps, books, tapes, photographs, films, sound
26 recordings, data processing software, or other material,
27 regardless of the physical form, characteristics, or means of
28 transmission, made or received pursuant to law or ordinance or
29 in connection with the transaction of official business by any
30 agency.

31 ~~(14)(12)~~ "Redact" means to conceal from a copy of an

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1 original public record, or to conceal from an electronic image
2 that is available for public viewing, that portion of the
3 record containing exempt or confidential information.

4 ~~(15)(13)~~ "Sensitive," for purposes of defining
5 agency-produced software that is sensitive, means only those
6 portions of data processing software, including the
7 specifications and documentation, which are used to:

8 (a) Collect, process, store, and retrieve information
9 that is exempt from s. 119.07(1);

10 (b) Collect, process, store, and retrieve financial
11 management information of the agency, such as payroll and
12 accounting records; or

13 (c) Control and direct access authorizations and
14 security measures for automated systems.

15 Section 3. Paragraph (a) of subsection (2) and
16 subsection (6) of section 119.07, Florida Statutes, are
17 amended to read:

18 119.07 Inspection and copying of records;
19 photographing public records; fees; exemptions.--

20 (2)(a) As an additional means of inspecting or copying
21 public records, a custodian of public records may provide
22 access to public records by remote electronic means, provided
23 exempt or confidential information is not disclosed, except as
24 otherwise provided by law.

25 ~~(6) Nothing in this chapter shall be construed to~~
26 ~~exempt from subsection (1) a public record that was made a~~
27 ~~part of a court file and that is not specifically closed by~~
28 ~~order of court, except as provided in s. 119.071(1)(d) and~~
29 ~~(f), (2)(d), (e), and (f), and (4)(c) and except information or~~
30 ~~records that may reveal the identity of a person who is a~~
31 ~~victim of a sexual offense as provided in s. 119.071(2)(h).~~

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1 Section 4. Section 119.0714, Florida Statutes, is
2 created to read:

3 119.0714 Judicial branch exemptions from inspection or
4 copying of public records made a part of a court file.--

5 (1) Nothing in this chapter shall be construed to
6 exempt from s. 119.07(1) and s. 24, Art. I of the State
7 Constitution a public record that was made a part of a court
8 file and that is not specifically closed by order of court,
9 except as provided in:

10 (a) s. 119.071(1)(d), which exempts a public record
11 that was prepared by an agency attorney that reflects a mental
12 impression, conclusion, litigation strategy, or other legal
13 theory and was prepared for certain purposes;

14 (b) s. 119.071(1)(f), which exempts data processing
15 software obtained by an agency under certain circumstances;

16 (c) s. 119.071(2)(d), which exempts any information
17 revealing surveillance techniques or procedures or personnel
18 and certain law enforcement resources, policies, or plans;

19 (d) s. 119.071(2)(e), which provides a limited
20 exemption for information revealing the substance of a
21 confession of an arrested person;

22 (e) s. 119.071(2)(f), which exempts any information
23 revealing the identity of a confidential informant or
24 confidential source;

25 (f) s. 119.071(2)(h), which exempts any criminal
26 intelligence information or criminal investigative information
27 that reveals the identity of the victim of certain crimes;

28 (g) s. 119.071(4)(c), which exempts any information
29 revealing undercover personnel of any criminal justice agency;

30 (h) s. 119.071(5)(a), which exempts social security
31 numbers;

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1 (i) s. 119.071(5)(b), which exempts bank account
2 numbers and debit, charge, and credit card numbers.

3 (2) This section has no application to exemptions not
4 contained in chapter 119 which may concern a public record
5 made part of a court file and may not be construed to be an
6 express or implied repeal thereof.

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