

By the Committee on Judiciary

590-2234-07

1                                   A bill to be entitled

2           An act relating to public records; amending s.

3           119.01, F.S.; revising the general state policy

4           concerning public records in order to conform

5           to provisions of the State Constitution

6           governing public records; amending s. 119.011,

7           F.S.; defining the terms "confidential and

8           exempt" and "exempt"; amending s. 119.07, F.S.;

9           deleting a provision specifying certain

10          public-record exemptions that apply to public

11          records made part of a court file; creating s.

12          119.0714, F.S.; specifying certain exemptions

13          from public-records requirements which apply to

14          records made part of a court file which are

15          otherwise public records; providing that social

16          security numbers and financial account numbers

17          are exempt from public-record requirements to

18          conform to changes made by the act; amending

19          ss. 257.34, 257.35, 383.402, 943.031, and

20          943.0313, F.S.; conforming cross-references;

21          providing a contingent effective date.

22

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

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25           Section 1. Subsection (1) and paragraph (f) of

26 subsection (2) of section 119.01, Florida Statutes, are

27 amended to read:

28           119.01 General state policy on public records.--

29           (1)(a) It is the policy of this state, consistent with

30 s. 24(a), Art. I of the State Constitution, that all ~~state,~~

31 ~~county, and municipal~~ records made or received in connection

1 with the official business of any public body, officer, or  
2 employee of the state, or persons acting on their behalf are  
3 open for personal inspection and copying by any person unless:

- 4       1. The record is exempt by statute;  
5       2. The record is confidential and exempt by statute;  
6       3. Access to the record is limited by court rule in  
7 effect as of November 3, 1992, unless the rule or a provision  
8 of the rule has been repealed;  
9       4. Access to the record is limited by legislative  
10 rule; or  
11       5. The record is confidential pursuant to the State  
12 Constitution.

13       (b) It is the responsibility of the Legislature to  
14 provide laws governing the enforcement of the right of any  
15 person to inspect or copy public records, including the  
16 maintenance, control, destruction, disposal, and disposition  
17 of public records.

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

20       (2)

21       (f) Each agency that maintains a public record in an  
22 electronic recordkeeping system shall provide to any person,  
23 pursuant to this chapter, a copy of any public record in that  
24 system which is not exempted by law from public disclosure or  
25 made confidential by the State Constitution. An agency must  
26 provide a copy of the record in the medium requested if the  
27 agency maintains the record in that medium, and the agency may  
28 charge a fee in accordance with this chapter. For the purpose  
29 of satisfying a public records request, the fee to be charged  
30 by an agency if it elects to provide a copy of a public record  
31 in a medium not routinely used by the agency, or if it elects

1 | to compile information not routinely developed or maintained  
2 | by the agency or that requires a substantial amount of  
3 | manipulation or programming, must be in accordance with s.  
4 | 119.07(4).

5 |         Section 2. Section 119.011, Florida Statutes, is  
6 | amended to read:

7 |         119.011 Definitions.--As used in this chapter, the  
8 | term:

9 |         (1) "Actual cost of duplication" means the cost of the  
10 | material and supplies used to duplicate the public record, but  
11 | does not include labor cost or overhead cost associated with  
12 | such duplication.

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

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

24 |         ~~(4)~~~~(3)~~(a) "Criminal intelligence information" means  
25 | information with respect to an identifiable person or group of  
26 | persons collected by a criminal justice agency in an effort to  
27 | anticipate, prevent, or monitor possible criminal activity.

28 |         (b) "Criminal investigative information" means  
29 | information with respect to an identifiable person or group of  
30 | persons compiled by a criminal justice agency in the course of  
31 | conducting a criminal investigation of a specific act or

1 omission, including, but not limited to, information derived  
2 from laboratory tests, reports of investigators or informants,  
3 or any type of surveillance.

4 (c) "Criminal intelligence information" and "criminal  
5 investigative information" shall not include:

6 1. The time, date, location, and nature of a reported  
7 crime.

8 2. The name, sex, age, and address of a person  
9 arrested or of the victim of a crime except as provided in s.  
10 119.071(2)(h).

11 3. The time, date, and location of the incident and of  
12 the arrest.

13 4. The crime charged.

14 5. Documents given or required by law or agency rule  
15 to be given to the person arrested, except as provided in s.  
16 119.071(2)(h), and, except that the court in a criminal case  
17 may order that certain information required by law or agency  
18 rule to be given to the person arrested be maintained in a  
19 confidential manner and exempt from the provisions of s.  
20 119.07(1) until released at trial if it is found that the  
21 release of such information would:

22 a. Be defamatory to the good name of a victim or  
23 witness or would jeopardize the safety of such victim or  
24 witness; and

25 b. Impair the ability of a state attorney to locate or  
26 prosecute a codefendant.

27 6. Informations and indictments except as provided in  
28 s. 905.26.

29 (d) The word "active" shall have the following  
30 meaning:

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

6           2. Criminal investigative information shall be  
7 considered "active" as long as it is related to an ongoing  
8 investigation which is continuing with a reasonable, good  
9 faith anticipation of securing an arrest or prosecution in the  
10 foreseeable future.

11  
12 In addition, criminal intelligence and criminal investigative  
13 information shall be considered "active" while such  
14 information is directly related to pending prosecutions or  
15 appeals. The word "active" shall not apply to information in  
16 cases which are barred from prosecution under the provisions  
17 of s. 775.15 or other statute of limitation.

18           ~~(5)(4)~~ "Criminal justice agency" means:

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

20           (b) Any other agency charged by law with criminal law  
21 enforcement duties;

22           (c) Any agency having custody of criminal intelligence  
23 information or criminal investigative information for the  
24 purpose of assisting such law enforcement agencies in the  
25 conduct of active criminal investigation or prosecution or for  
26 the purpose of litigating civil actions under the Racketeer  
27 Influenced and Corrupt Organization Act, during the time that  
28 such agencies are in possession of criminal intelligence  
29 information or criminal investigative information pursuant to  
30 their criminal law enforcement duties; or

31           (d) The Department of Corrections.

1           ~~(6)~~~~(5)~~ "Custodian of public records" means the elected  
2 or appointed state, county, or municipal officer charged with  
3 the responsibility of maintaining the office having public  
4 records, or his or her designee.

5           ~~(7)~~~~(6)~~ "Data processing software" means the programs  
6 and routines used to employ and control the capabilities of  
7 data processing hardware, including, but not limited to,  
8 operating systems, compilers, assemblers, utilities, library  
9 routines, maintenance routines, applications, and computer  
10 networking programs.

11           ~~(8)~~~~(7)~~ "Duplicated copies" means new copies produced  
12 by duplicating, as defined in s. 283.30.

13           ~~(9)~~ "Exempt" means information that is protected by an  
14 exemption and that is not subject to inspection; however, a  
15 custodian of public records is not prohibited from releasing  
16 such information in all circumstances. The decision to release  
17 exempt information must be based on a statutory provision or a  
18 substantial policy need for disclosure or must be for a reason  
19 that is consistent with the public purpose of the exemption.

20           ~~(10)~~~~(8)~~ "Exemption" means a provision of general law  
21 which provides that a specified record or meeting, or portion  
22 thereof, is not subject to the access requirements of s.  
23 119.07(1), s. 286.011, or s. 24, Art. I of the State  
24 Constitution.

25           ~~(11)~~~~(9)~~ "Information technology resources" means data  
26 processing hardware and software and services, communications,  
27 supplies, personnel, facility resources, maintenance, and  
28 training.

29           ~~(12)~~~~(10)~~ "Proprietary software" means data processing  
30 software that is protected by copyright or trade secret laws.  
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1        ~~(13)~~(11) "Public records" means all documents, papers,  
2 letters, maps, books, tapes, photographs, films, sound  
3 recordings, data processing software, or other material,  
4 regardless of the physical form, characteristics, or means of  
5 transmission, made or received pursuant to law or ordinance or  
6 in connection with the transaction of official business by any  
7 agency.

8        ~~(14)~~(12) "Redact" means to conceal from a copy of an  
9 original public record, or to conceal from an electronic image  
10 that is available for public viewing, that portion of the  
11 record containing exempt or confidential information.

12        ~~(15)~~(13) "Sensitive," for purposes of defining  
13 agency-produced software that is sensitive, means only those  
14 portions of data processing software, including the  
15 specifications and documentation, which are used to:

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

18            (b) Collect, process, store, and retrieve financial  
19 management information of the agency, such as payroll and  
20 accounting records; or

21            (c) Control and direct access authorizations and  
22 security measures for automated systems.

23        Section 3. Paragraph (a) of subsection (2) and  
24 subsection (6) of section 119.07, Florida Statutes, are  
25 amended to read:

26        119.07 Inspection and copying of records;  
27 photographing public records; fees; exemptions.--

28            (2)(a) As an additional means of inspecting or copying  
29 public records, a custodian of public records may provide  
30 access to public records by remote electronic means, provided  
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1 exempt or confidential information is not disclosed, except as  
2 otherwise provided by law.

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

10 Section 4. Section 119.0714, Florida Statutes, is  
11 created to read:

12 119.0714 Judicial branch exemptions from inspection or  
13 copying of public records made a part of a court file.--

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

19 (a) Section 119.071(1)(d), which exempts a public  
20 record that was prepared by an agency attorney, that reflects  
21 a mental impression, conclusion, litigation strategy, or other  
22 legal theory, and that was prepared for certain purposes;

23 (b) Section 119.071(1)(f), which exempts data  
24 processing software obtained by an agency under certain  
25 circumstances;

26 (c) Section 119.071(2)(d), which exempts any  
27 information revealing surveillance techniques or procedures or  
28 personnel and certain law enforcement resources, policies, or  
29 plans;

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1           (d) Section 119.071(2)(e), which provides a limited  
2 exemption for information revealing the substance of a  
3 confession of an arrested person;

4           (e) Section 119.071(2)(f), which exempts any  
5 information revealing the identity of a confidential informant  
6 or confidential source;

7           (f) Section 119.071(2)(h), which exempts any criminal  
8 intelligence information or criminal investigative information  
9 that reveals the identity of the victim of certain crimes;

10           (g) Section 119.071(4)(c), which exempts any  
11 information revealing undercover personnel of any criminal  
12 justice agency;

13           (h) Section 119.071(5)(a), which exempts social  
14 security numbers; or

15           (i) Section 119.071(5)(b), which exempts bank account  
16 numbers and debit, charge, and credit card numbers.

17           (2) This section does not apply to exemptions not  
18 contained in this chapter which may concern a public record  
19 made part of a court file, and this section is not an express  
20 or implied repeal thereof.

21           Section 5. Subsection (1) of section 257.34, Florida  
22 Statutes, is amended to read:

23           257.34 Florida International Archive and Repository.--

24           (1) There is created within the Division of Library  
25 and Information Services of the Department of State the  
26 Florida International Archive and Repository for the  
27 preservation of those public records, as defined in s.  
28 119.011(13) ~~s. 119.011(11)~~, manuscripts, international  
29 judgments involving disputes between domestic and foreign  
30 businesses, and all other public matters that the department  
31 or the Florida Council of International Development deems

1 relevant to international issues. It is the duty and  
2 responsibility of the division to:

3 (a) Organize and administer the Florida International  
4 Archive and Repository.

5 (b) Preserve and administer records that are  
6 transferred to its custody; accept, arrange, and preserve  
7 them, according to approved archival and repository practices;  
8 and permit them, at reasonable times and under the supervision  
9 of the division, to be inspected and copied. All public  
10 records transferred to the custody of the division are subject  
11 to the provisions of s. 119.07(1).

12 (c) Assist the records and information management  
13 program in the determination of retention values for records.

14 (d) Cooperate with and assist, insofar as practicable,  
15 state institutions, departments, agencies, counties,  
16 municipalities, and individuals engaged in internationally  
17 related activities.

18 (e) Provide a public research room where, under rules  
19 established by the division, the materials in the  
20 international archive and repository may be studied.

21 (f) Conduct, promote, and encourage research in  
22 international trade, government, and culture and maintain a  
23 program of information, assistance, coordination, and guidance  
24 for public officials, educational institutions, libraries, the  
25 scholarly community, and the general public engaged in such  
26 research.

27 (g) Cooperate with and, insofar as practicable, assist  
28 agencies, libraries, institutions, and individuals in projects  
29 concerned with internationally related issues and preserve  
30 original materials relating to internationally related issues.  
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1           (h) Assist and cooperate with the records and  
2 information management program in the training and information  
3 program described in s. 257.36(1)(g).

4           Section 6. Subsection (1) of section 257.35, Florida  
5 Statutes, is amended to read:

6           257.35 Florida State Archives.--

7           (1) There is created within the Division of Library  
8 and Information Services of the Department of State the  
9 Florida State Archives for the preservation of those public  
10 records, as defined in s. 119.011(13) ~~s. 119.011(11)~~,  
11 manuscripts, and other archival material that have been  
12 determined by the division to have sufficient historical or  
13 other value to warrant their continued preservation and have  
14 been accepted by the division for deposit in its custody. It  
15 is the duty and responsibility of the division to:

16           (a) Organize and administer the Florida State  
17 Archives.

18           (b) Preserve and administer such records as shall be  
19 transferred to its custody; accept, arrange, and preserve  
20 them, according to approved archival practices; and permit  
21 them, at reasonable times and under the supervision of the  
22 division, to be inspected and copied. All public records  
23 transferred to the custody of the division shall be subject to  
24 the provisions of s. 119.07(1), except that any public record  
25 or other record provided by law to be confidential or  
26 prohibited from inspection by the public shall be made  
27 accessible only after a period of 50 years from the date of  
28 the creation of the record. Any nonpublic manuscript or other  
29 archival material which is placed in the keeping of the  
30 division under special terms and conditions, shall be made  
31 accessible only in accordance with such law terms and

1 | conditions and shall be exempt from the provisions of s.  
2 | 119.07(1) to the extent necessary to meet the terms and  
3 | conditions for a nonpublic manuscript or other archival  
4 | material.

5 |         (c) Assist the records and information management  
6 | program in the determination of retention values for records.

7 |         (d) Cooperate with and assist insofar as practicable  
8 | state institutions, departments, agencies, counties,  
9 | municipalities, and individuals engaged in activities in the  
10 | field of state archives, manuscripts, and history and accept  
11 | from any person any paper, book, record, or similar material  
12 | which in the judgment of the division warrants preservation in  
13 | the state archives.

14 |         (e) Provide a public research room where, under rules  
15 | established by the division, the materials in the state  
16 | archives may be studied.

17 |         (f) Conduct, promote, and encourage research in  
18 | Florida history, government, and culture and maintain a  
19 | program of information, assistance, coordination, and guidance  
20 | for public officials, educational institutions, libraries, the  
21 | scholarly community, and the general public engaged in such  
22 | research.

23 |         (g) Cooperate with and, insofar as practicable, assist  
24 | agencies, libraries, institutions, and individuals in projects  
25 | designed to preserve original source materials relating to  
26 | Florida history, government, and culture and prepare and  
27 | publish handbooks, guides, indexes, and other literature  
28 | directed toward encouraging the preservation and use of the  
29 | state's documentary resources.

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1 (h) Encourage and initiate efforts to preserve,  
2 collect, process, transcribe, index, and research the oral  
3 history of Florida government.

4 (i) Assist and cooperate with the records and  
5 information management program in the training and information  
6 program described in s. 257.36(1)(g).

7 Section 7. Subsection (9) of section 383.402, Florida  
8 Statutes, is amended to read:

9 383.402 Child abuse death review; State Child Abuse  
10 Death Review Committee; local child abuse death review  
11 committees.--

12 (9) The State Child Abuse Death Review Committee or a  
13 local committee shall have access to all information of a law  
14 enforcement agency which is not the subject of an active  
15 investigation and which pertains to the review of the death of  
16 a child. A committee may not disclose any information that is  
17 not subject to public disclosure by the law enforcement  
18 agency, and active criminal intelligence information or  
19 criminal investigative information, as defined in s.  
20 119.011(4) ~~s. 119.011(3)~~, may not be made available for review  
21 or access under this section.

22 Section 8. Paragraph (b) of subsection (7) of section  
23 943.031, Florida Statutes, is amended to read:

24 943.031 Florida Violent Crime and Drug Control  
25 Council.--The Legislature finds that there is a need to  
26 develop and implement a statewide strategy to address violent  
27 criminal activity and drug control efforts by state and local  
28 law enforcement agencies, including investigations of illicit  
29 money laundering. In recognition of this need, the Florida  
30 Violent Crime and Drug Control Council is created within the  
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1 department. The council shall serve in an advisory capacity to  
2 the department.

3 (7) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL  
4 MEETINGS AND RECORDS.--

5 (b) The Florida Violent Crime and Drug Control Council  
6 shall be considered a "criminal justice agency" within the  
7 definition of s. 119.011(5) ~~s. 119.011(4)~~.

8 Section 9. Subsection (7) of section 943.0313, Florida  
9 Statutes, is amended to read:

10 943.0313 Domestic Security Oversight Council.--The  
11 Legislature finds that there exists a need to provide  
12 executive direction and leadership with respect to terrorism  
13 prevention, preparation, protection, response, and recovery  
14 efforts by state and local agencies in this state. In  
15 recognition of this need, the Domestic Security Oversight  
16 Council is hereby created. The council shall serve as an  
17 advisory council pursuant to s. 20.03(7) to provide guidance  
18 to the state's regional domestic security task forces and  
19 other domestic security working groups and to make  
20 recommendations to the Governor and the Legislature regarding  
21 the expenditure of funds and allocation of resources related  
22 to counter-terrorism and domestic security efforts.

23 (7) AGENCY DESIGNATION.--For purposes of this section,  
24 the Domestic Security Oversight Council shall be considered a  
25 criminal justice agency within the definition of s. 119.011(5)  
26 ~~s. 119.011(4)~~.

27 Section 10. This act shall take effect October 1,  
28 2007, if Senate Bill 1348, or similar legislation reenacting  
29 and saving paragraphs 119.071(5)(a) and (b), Florida Statutes,  
30 from repeal, is adopted in the same legislative session, or an  
31 extension thereof, and becomes law.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   SB 1346  
4                   Revises the existing bill language for s. 119.01(1), F.S., the  
5                   general state policy on public records, to improve the  
6                   organization and readability.  
7                   Revises the bill definitions of "exempt" and "confidential and  
8                   exempt" to better conform them to those definitions as  
9                   expressed in Florida case law.  
10                  Reorganizes the bill language related to the list of public  
11                  records exemptions in chapter 119, F.S., that are valid for  
12                  public records made part of court files to improve the  
13                  readability and revises a provision in that section to enhance  
14                  its clarity.  
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