

FOR CONSIDERATION By the Committee on Judiciary

590-1035A-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) It is the policy of this state, consistent with s.
30 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, except
4 with respect to records exempted. Records may be made exempt
5 or confidential and exempt by law or made confidential by the
6 State Constitution. Also, access to records may be limited by
7 court rule in effect as of November 3, 1992. Providing access
8 to public records is a duty of each agency. Furthermore, it is
9 the responsibility of the Legislature to provide laws
10 governing the enforcement of the right of any person to
11 inspect or copy public records, including the maintenance,
12 control, destruction, disposal, and disposition of public
13 records pursuant to s. 24(c), Art. I of the State
14 Constitution, except that each house of the Legislature may
15 adopt rules governing enforcement with respect to records of
16 the legislative branch.

17 (2)

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

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1 manipulation or programming, must be in accordance with s.
2 119.07(4).

3 Section 2. Section 119.011, Florida Statutes, is
4 amended to read:

5 119.011 Definitions.--As used in this chapter, the
6 term:

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

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

19 (3) "Confidential and exempt" means information that
20 is covered by an exemption, that is not subject to inspection
21 by the public, and that may be released only as specified by
22 law.

23 ~~(4)(3)~~(a) "Criminal intelligence information" means
24 information with respect to an identifiable person or group of
25 persons collected by a criminal justice agency in an effort to
26 anticipate, prevent, or monitor possible criminal activity.

27 (b) "Criminal investigative information" means
28 information with respect to an identifiable person or group of
29 persons compiled by a criminal justice agency in the course of
30 conducting a criminal investigation of a specific act or
31 omission, including, but not limited to, information derived

1 from laboratory tests, reports of investigators or informants,
2 or any type of surveillance.

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

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

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

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

12 4. The crime charged.

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

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

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

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

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

30 1. Criminal intelligence information shall be
31 considered "active" as long as it is related to intelligence

1 gathering conducted with a reasonable, good faith belief that
2 it will lead to detection of ongoing or reasonably anticipated
3 criminal activities.

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

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

16 ~~(5)(4)~~ "Criminal justice agency" means:

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

18 (b) Any other agency charged by law with criminal law
19 enforcement duties;

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

29 (d) The Department of Corrections.

30 ~~(6)(5)~~ "Custodian of public records" means the elected
31 or appointed state, county, or municipal officer charged with

1 the responsibility of maintaining the office having public
2 records, or his or her designee.

3 ~~(7)(6)~~ "Data processing software" means the programs
4 and routines used to employ and control the capabilities of
5 data processing hardware, including, but not limited to,
6 operating systems, compilers, assemblers, utilities, library
7 routines, maintenance routines, applications, and computer
8 networking programs.

9 ~~(8)(7)~~ "Duplicated copies" means new copies produced
10 by duplicating, as defined in s. 283.30.

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

19 ~~(10)(8)~~ "Exemption" means a provision of general law
20 which provides that a specified record or meeting, or portion
21 thereof, is not subject to the access requirements of s.
22 119.07(1), s. 286.011, or s. 24, Art. I of the State
23 Constitution.

24 ~~(11)(9)~~ "Information technology resources" means data
25 processing hardware and software and services, communications,
26 supplies, personnel, facility resources, maintenance, and
27 training.

28 ~~(12)(10)~~ "Proprietary software" means data processing
29 software that is protected by copyright or trade secret laws.

30 ~~(13)(11)~~ "Public records" means all documents, papers,
31 letters, maps, books, tapes, photographs, films, sound

1 | recordings, data processing software, or other material,
2 | regardless of the physical form, characteristics, or means of
3 | transmission, made or received pursuant to law or ordinance or
4 | in connection with the transaction of official business by any
5 | agency.

6 | ~~(14)~~~~(12)~~ "Redact" means to conceal from a copy of an
7 | original public record, or to conceal from an electronic image
8 | that is available for public viewing, that portion of the
9 | record containing exempt or confidential information.

10 | ~~(15)~~~~(13)~~ "Sensitive," for purposes of defining
11 | agency-produced software that is sensitive, means only those
12 | portions of data processing software, including the
13 | specifications and documentation, which are used to:

14 | (a) Collect, process, store, and retrieve information
15 | that is exempt from s. 119.07(1);

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

19 | (c) Control and direct access authorizations and
20 | security measures for automated systems.

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

24 | 119.07 Inspection and copying of records;
25 | photographing public records; fees; exemptions.--

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

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

8 Section 4. Section 119.0714, Florida Statutes, is
9 created to read:

10 119.0714 Judicial branch exemptions from inspection or
11 copying of public records made a part of a court file.--

12 (1) Nothing in this chapter shall be construed to
13 exempt from s. 119.07(1) and s. 24, Art. I of the State
14 Constitution a public record that was made a part of a court
15 file and that is not specifically closed by order of court,
16 except as provided in s. 119.071(1)(d) and (f), (2)(d), (e),
17 and (f), (4)(c), and (5)(a) and (b) and except information or
18 records that may reveal the identity of a person who is a
19 victim of a sexual offense as provided in s. 119.071(2)(h).

20 (2) This section has no application to other
21 exemptions from s. 119.07(1) which are contained in other
22 provisions of law and shall not be construed to be an express
23 or implied repeal thereof.

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

26 257.34 Florida International Archive and Repository.--

27 (1) There is created within the Division of Library
28 and Information Services of the Department of State the
29 Florida International Archive and Repository for the
30 preservation of those public records, as defined in s.
31 119.011(13) ~~s. 119.011(11)~~, manuscripts, international

1 judgments involving disputes between domestic and foreign
2 businesses, and all other public matters that the department
3 or the Florida Council of International Development deems
4 relevant to international issues. It is the duty and
5 responsibility of the division to:

6 (a) Organize and administer the Florida International
7 Archive and Repository.

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

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

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

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

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

30 (g) Cooperate with and, insofar as practicable, assist
31 agencies, libraries, institutions, and individuals in projects

1 concerned with internationally related issues and preserve
2 original materials relating to internationally related issues.

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

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

8 257.35 Florida State Archives.--

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

18 (a) Organize and administer the Florida State
19 Archives.

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

1 | division under special terms and conditions, shall be made
2 | accessible only in accordance with such law terms and
3 | conditions and shall be exempt from the provisions of s.
4 | 119.07(1) to the extent necessary to meet the terms and
5 | conditions for a nonpublic manuscript or other archival
6 | material.

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

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

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

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

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

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 ____, 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.

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SENATE SUMMARY

Revises the state policy concerning public records in order to conform to provisions of the State Constitution governing public records. Defines the terms "confidential and exempt" and "exempt." Includes the exemptions for social security numbers and financial account numbers provided under s. 119.071(5)(a) and (b), F.S., in the list of public records that are part of court files and that are exempt from s. 119.07(1), F.S.