

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 916

INTRODUCER: Criminal Justice Committee and Senators Oelrich and Garcia

SUBJECT: Public Records Exemption, Public Employee Date of Birth

DATE: February 22, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			GO	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Current law provides public record exemptions for identification and location information of certain public employees and their spouses and children. Examples of protected information include:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by children of the public employees.

The bill expands the public record exemptions for such public employees to include the dates of birth of the public employees and of their spouses and children. It also clarifies that the current exemption for law enforcement agency personnel applies to sworn and civilian agency personnel, their spouses, and children.

The bill deletes current statutorily-scheduled repeal of three sub-subparagraphs within s. 199.071(4)(d), F.S., and essentially *extends* the repeal dates by 2-4 years.

The current exemption for identification and location information applicable to the judiciary is expanded to include *former* justices and judges, and their spouses and children.

The bill also creates a definition for “telephone numbers” and specifies that the telephone number information of sworn and civilian law enforcement personnel and their spouses and children is exempt from public record requirements.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Law

Article I, s. 24(a) of the State 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects trade or business secrets.

Repeal at the end of Five Years

Section 119.15(3), F.S., requires that “[i]n the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.”

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

Public Record Exemptions for Identification and Location Information

Current law provides public record exemptions for identification and location information of certain public employees and their spouses and children.³ Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;⁴
- Firefighters;⁵
- Justices and judges;⁶
- Local and statewide prosecuting attorneys;⁷
- Magistrates, administrative law judges, and child support hearing officers;⁸
- Local government agency and water management district human resources administrators;⁹
- Code enforcement officers;¹⁰
- Guardians ad litem;¹¹
- Specified Department of Juvenile Justice Personnel;¹² and
- Public defenders and criminal conflict and civil regional counsel.¹³

Although the types of exempt information vary, the following information is exempt¹⁴ from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers¹⁵ of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

³ See s. 119.071(4)(d), F.S.

⁴ See s. 119.071(4)(d)1.a., F.S.

⁵ See s. 119.071(4)(d)1.b., F.S.

⁶ See s. 119.071(4)(d)1.c., F.S.

⁷ See s. 119.071(4)(d)1.d., F.S.

⁸ See s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

⁹ See s. 119.071(4)(d)1.f., F.S.

¹⁰ See s. 119.071(4)(d)1.g., F.S.

¹¹ See s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

¹² See s. 119.071(4)(d)1.i., F.S.

¹³ See s. 119.071(4)(d)1.j., F.S.

¹⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹⁵ "Telephone number" is not currently defined in these public record exemptions.

If exempt information is held by an agency¹⁶ that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.¹⁷

III. Effect of Proposed Changes:

The bill expands the public record exemptions for identification and location information of certain public employees to include dates of birth of the public employees and of their spouses and children. It also specifies that the public record exemption for identification and location information of law enforcement personnel applies to sworn and civilian law enforcement personnel.

The current exemption for identification and location information applicable to the judiciary is expanded to include *former* justices and judges, and their spouses and children.

The bill deletes the current statutorily-required repeal of public records exemptions that apply to magistrates, administrative law judges, guardians ad litem, public defenders and others.¹⁸

The bill defines the term “telephone numbers” to include home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

The bill provides a statement of public necessity as set forth in Section 2 of the bill.¹⁹ It states that (paraphrasing):

- The Legislature finds that it is a public necessity that the dates of birth of agency personnel and their families be made exempt from s. 24(a), Article I of the State Constitution.
 - date of birth information can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an employee.
 - a person could use the date of birth information to further identity fraud or for other criminal purposes. For these reasons, the public records exemption provided in this act is necessary for the effective administration of agency personnel.
- The Legislature further finds that within the existing exemption for telephone numbers of agency personnel and their families, the term “telephone numbers” should be defined and clarified.

¹⁶ Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁷ Section 119.071(4)(d)2., F.S.

¹⁸ See s. 119.071(4)(d)1.e., h., and j., F.S., which currently require review on or before October 1, 2013, 2015 and 2015, respectively.

¹⁹ Section 24(c), Art. I of the State Constitution.

- telephone numbers are an additional means by which those individuals could be identified and put at risk.
- The Legislature finds that former justices and judges and their families should fall within the existing exemption applicable to current members of the judiciary.
 - because of the work that the judiciary does they are targets for acts of revenge.
 - the risk continues after justices and judges complete their public service.

The bill becomes effective on October 1, 2012, and provides for repeal of the exemptions in the amended paragraph (d) of s. 119.071(4), F.S., on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill specifies that the exemptions apply to information held before, on, or after the effective date of the exemptions.²⁰

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it *requires a two-thirds vote for final passage*.

It should be noted that three existing sub-subparagraphs of the paragraph amended by the bill are scheduled to stand repealed, or for reenactment after legislative review, under the requirements of s. 119.15(3), F.S., prior to the date now specified by the bill.²¹

The bill deletes the statutory language in current s. 119.071(4)(d)1.e., h., and j., F.S., that sets forth the repeal dates for those sub-subparagraphs. Instead, the bill would extend the exemptions in sub-subparagraphs e., h., and j. until October 2, 2017, by scheduling the *entire paragraph* for repeal at that time.

The argument could be made that by adding “dates of birth” to the three sub-subparagraphs cited above, the exemptions have been “substantially amended”²² and therefore should be reviewed in *5 years from the date of the substantial amendment made by the bill*.

However, it is thought that the plain meaning of s. 119.15(3) F.S. (“In the 5th year after enactment of a new exemption or *substantial amendment of an existing exemption*, the

²⁰ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²¹ See s. 119.071(4)(d)1.e., h., and j., F.S., which currently require review on or before October 1, 2013, 2015 and 2015, respectively.

²² See s. 119.15(3), F.S.

exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.”) is not likely to be construed by the courts to mean that a “substantial amendment” to an existing exemption *that is currently scheduled for repeal or legislative reenactment* should *alter or extend the current repeal date* by virtue of the amendment’s effect.

In other words, if an exemption *stands to be repealed* on October 2, 2013, to extend that date (to October 2, 2017) by “substantially amending” the exemption seems to circumvent the intent of the five-year review process. It is suggested that it might be more prudent to leave the current repeal/reenactment dates intact and schedule *only* the “date of birth” amendments to those sub-subparagraphs for repeal/reenactment in October 2017.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 22, 2012:

- The bill is reorganizes existing s. 119.071(4)(d), F.S.
- The amended bill deletes the original bill language that had included agency-related telephone numbers within the definition of telephone numbers for purposes of the public records exemption.

- The current exemption applicable to the judiciary, found in s. 119.071(4)(d)2.c., F.S., is broadened to include *former* justices and judges, and their spouses and children.
- The statement of public necessity is amended to include the necessity for the exemption applicable to former justices and judges, and the clarification of the existing exemption of telephone numbers.
- The bill deletes the current statutorily-scheduled repeal of three sub-subparagraphs within s. 199.071(4)(d), F.S., and essentially *extends* the repeal dates by 2-4 years.
- The bill provides for retroactivity of the public records exemptions created and clarified by the bill.

B. Amendments:

None.