

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: SB 916

INTRODUCER: Senators Oelrich and Garcia

SUBJECT: Public Records Exemption, Public Employee Date of Birth

DATE: February 17, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			GO	
3.				
4.				
5.				
6.				

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.

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.

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

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

² Section 119.15, F.S.

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.

- 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.

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 bill defines the term “telephone numbers” to include home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, telephone numbers associated

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.

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.

with personal communications devices and telephone numbers associated with agency personal communications devices.

The bill provides a statement of public necessity as set forth in Section 2 of the bill¹⁸:

The Legislature finds that it is a public necessity that the dates of birth of certain employees of agencies be made exempt from s. 24(a), Article I of the State Constitution. An agency needs the date of birth information from an employee for identifying purposes as its role as an employer. If such information is available as a public record, fewer people may be willing to provide the information. The Legislature recognizes that date of birth information can be used as a tool to perpetuate fraud against an employee and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an employee. Without a public records exemption, 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 bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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*.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁸ Section 24(c), Art. I of the State Constitution.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill does not specify that the exemptions apply to information held before, on, or after the effective date of the exemptions although it is presumed that is the intent of the bill's sponsor.¹⁹

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ 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).