



434458

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
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The Committee on Judiciary (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (11) is added to section 501.171,  
Florida Statutes, as created by SB 1524, 2014 Regular Session,  
to read:

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to  
a notification required by this section, or received by the



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12 department pursuant to an investigation by the department or a  
13 law enforcement agency, is confidential and exempt from s.  
14 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
15 such time as the investigation is completed or ceases to be  
16 active. This exemption shall be construed in conformity with s.  
17 119.071(2)(c).

18 (b) During an active investigation, information made  
19 confidential and exempt pursuant to paragraph (a) may be  
20 disclosed by the department:

21 1. In the furtherance of its official duties and  
22 responsibilities;

23 2. For print, publication, or broadcast if the department  
24 determines that such release would assist in notifying the  
25 public or locating or identifying a person that the department  
26 believes to be a victim of a data breach or improper disposal of  
27 customer records; or

28 3. To another governmental entity in the furtherance of its  
29 official duties and responsibilities.

30 (c) Upon completion of an investigation or once an  
31 investigation ceases to be active, the following information  
32 received by the department shall remain confidential and exempt  
33 from s. 119.07(1) and s. 24(a), Art. I of the State  
34 Constitution:

35 1. All information to which another public records  
36 exemption applies.

37 2. Personal information.

38 3. A computer forensic report.

39 4. Information that would otherwise reveal weaknesses in a  
40 covered entity's data security.



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41 5. Information that would disclose a covered entity's  
42 proprietary information.

43 (d) For purposes of this subsection, the term "proprietary  
44 information" means information that:

45 1. Is owned or controlled by the covered entity.

46 2. Is intended to be private and is treated by the covered  
47 entity as private because disclosure would harm the covered  
48 entity or its business operations.

49 3. Has not been disclosed except as required by law or a  
50 private agreement that provides that the information will not be  
51 released to the public.

52 4. Is not publicly available or otherwise readily  
53 ascertainable through proper means from another source in the  
54 same configuration as received by the department.

55 5. Includes:

56 a. Trade secrets as defined in s. 688.002.

57 b. Competitive interests, the disclosure of which would  
58 impair the competitive business of the covered entity who is the  
59 subject of the information.

60 (e) This subsection is subject to the Open Government  
61 Sunset Review Act in accordance with s. 119.15 and shall stand  
62 repealed on October 2, 2019, unless reviewed and saved from  
63 repeal through reenactment by the Legislature.

64 Section 2. The Legislature finds that it is a public  
65 necessity that all information received by the Department of  
66 Legal Affairs pursuant to a notification of a violation of s.  
67 501.171, Florida Statutes, or received by the department  
68 pursuant to an investigation by the department or a law  
69 enforcement agency, be made confidential and exempt from s.



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70 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
71 State Constitution for the following reasons:

72 (1) A notification of a violation of s. 501.171, Florida  
73 Statutes, is likely to result in an investigation of such  
74 violation because a data breach is likely the result of criminal  
75 activity that may lead to further criminal activity. The  
76 premature release of such information could frustrate or thwart  
77 the investigation and impair the ability of the Department of  
78 Legal Affairs to effectively and efficiently administer s.  
79 501.171, Florida Statutes. In addition, release of such  
80 information before completion of an active investigation could  
81 jeopardize the ongoing investigation.

82 (2) The Legislature finds that it is a public necessity to  
83 continue to protect from public disclosure all information to  
84 which another public record exemption applies once an  
85 investigation is completed or ceases to be active. Release of  
86 such information by the Department of Legal Affairs would undo  
87 the specific statutory exemption protecting that information.

88 (3) An investigation of a data breach or improper disposal  
89 of customer records is likely to result in the gathering of  
90 sensitive personal information, including social security  
91 numbers, identification numbers, and personal financial and  
92 health information. Such information could be used for the  
93 purpose of identity theft. In addition, release of such  
94 information could subject possible victims of the data breach or  
95 improper disposal of customer records to further financial harm.  
96 Furthermore, matters of personal health are traditionally  
97 private and confidential concerns between the patient and the  
98 health care provider. The private and confidential nature of



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99 personal health matters pervades both the public and private  
100 health care sectors.

101 (4) Release of a computer forensic report or other  
102 information that would otherwise reveal weaknesses in a covered  
103 entity's data security could compromise the future security of  
104 that entity, or other entities, if such information were  
105 available upon conclusion of an investigation or once an  
106 investigation ceased to be active. The release of such report or  
107 information could compromise the security of current entities  
108 and make those entities susceptible to future data breaches.  
109 Release of such report or information could result in the  
110 identification of vulnerabilities and further breaches of that  
111 system.

112 (5) Notices received by the Department of Legal Affairs and  
113 information received during an investigation of a data breach  
114 are likely to contain proprietary information, including trade  
115 secrets, about the security of the breached system. The release  
116 of the proprietary information could result in the  
117 identification of vulnerabilities and further breaches of that  
118 system. In addition, a trade secret derives independent,  
119 economic value, actual or potential, from being generally  
120 unknown to, and not readily ascertainable by, other persons who  
121 might obtain economic value from its disclosure or use. Allowing  
122 public access to proprietary information, including a trade  
123 secret, through a public records request could destroy the value  
124 of the proprietary information and cause a financial loss to the  
125 covered entity submitting the information. Release of such  
126 information could give business competitors an unfair advantage  
127 and weaken the position of the entity supplying the proprietary



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128 information in the marketplace.

129       Section 3. This act shall take effect on the same date that  
130 SB 1524 or similar legislation takes effect, if such legislation  
131 is adopted in the same legislative session or an extension  
132 thereof and becomes a law.

133  
134 ===== T I T L E   A M E N D M E N T =====

135 And the title is amended as follows:

136       Delete everything before the enacting clause  
137 and insert:

138                               A bill to be entitled  
139       An act relating to public records; amending s.  
140       501.171, F.S.; creating an exemption from public  
141       records requirements for information received by the  
142       Department of Legal Affairs pursuant to a notice of a  
143       data breach or pursuant to certain investigations;  
144       authorizing disclosure under certain circumstances;  
145       defining the term "proprietary information"; providing  
146       for future review and repeal of the exemption under  
147       the Open Government Sunset Review Act; providing a  
148       statement of public necessity; providing a contingent  
149       effective date.