



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



434458

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.



434458

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.



434458

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



434458

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



434458

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.