

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 Committee on Rules

BILL: CS/CS/SB 226

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee; and Senator Brandes

SUBJECT: Public Records/Automated License Plate Recognition Systems Exemption

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Everette</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 226 creates a public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. This information will be confidential and exempt from public disclosure. CS/CS/SB 226 provides that an agency may release this information to a criminal justice agency in the performance of its official duties. This bill also provides that a person to whom a license plate is registered may also have access to his or her own information, as long as the information is not subject to an active public criminal investigation. This bill also provides for retroactive application.

CS/CS/SB 226 is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. It is sometimes also referred to as automated number plate recognition system or automated

licensed reader. The extracted information can be used with or without a database in many applications, such as electronic payment systems (toll payment, parking fee payment), and freeway and arterial monitoring systems for traffic surveillance. The ALPRS uses either a color, black and white, or ultraviolet camera to take images of passing license plates and quickly processes the data under different environmental conditions, such as indoors, outdoors, day or night.

Data obtained from an ALPRS is generally used to check license plates against law enforcement “hot” lists. This captured information (i.e., license plate number, date, time, and location) is collected, matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

In July 2012, the American Civil Liberties Union (ACLU) sent public records act requests to nearly 600 local and state police departments and other state and federal agencies to obtain information on how these agencies use such information.¹ In response, 26,000 pages were received detailing the use of the technology around the country. The ACLU report found that although police departments typically only have a few of its vehicles equipped with the ALPRSs, they project increased numbers within the next five years. The same report found that law enforcement agencies were increasingly capturing drivers’ locations outside church, the doctor’s office, and school, etc., giving law enforcement and private companies the ability to build detailed pictures of citizens’ lives. In some instances the stored information stretched back months, even years.²

The ACLU recommends the following principles for the use and disclosure of automated license plate recognition systems:

- Law enforcement agencies must place access controls on license plate reader databases. Only agents who have been trained in the departments’ policies governing such databases should be permitted access, and departments should log access records pertaining to the databases.
- People should be able to find out if plate data of vehicles registered to them are contained in a law enforcement agency’s database. They should also be able to access the data. This policy should also apply to disclosure to a third party if the registered vehicle owner consents, or for criminal defendants seeking relevant evidence.

¹ <https://www.aclu.org/alpr> (last visited on Jan. 6, 2014)

² Id.

- Law enforcement agencies should not share license plate reader data with third parties that do not conform to the above retention and access principles, and should be transparent regarding with whom license plate reader data are shared.³

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Only the Legislature may create an exemption to public records requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or

³<https://www.aclu.org/files/assets/071613-aclu-alpreport-opt-v05.pdf> (last visited Jan. 7, 2014)

⁴ FLA CONST., art. I, s. 24(a).

⁵ Id.

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

substantial amendment, unless the Legislature reenacts the exemption.¹⁴ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.

Section 119.15(6)(b), F.S. provides that an exemption may be created if it serves an identifiable public purpose and the exemption is tailored to that public purpose. An identifiable public purpose is served if the exemption allows a government entity to effectively perform its duties, protections a person from defamation and if it protects confidential business information.¹⁵

Currently, there are no general public records exemptions for images or data generated by automated license plate recognition systems in the State of Florida.

III. Effect of Proposed Changes:

Section 1 creates a confidential and exempt standard of protection for data generated by automated license plate recognition system. Section 316.0777, F.S., defines “agency” as having the same meaning as in s. 119.011, F.S.,¹⁶ and “automated license plate recognition system” as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.”

The bill requires that such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S.¹⁷ in performance of the agency’s official duties.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(1), F.S. provides:

An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

¹⁶ Section 119.011(2), F.S. defines an agency” as “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 119.011(4), F.S., provides that “[c]riminal justice agency” means: (a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections.”

- To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.¹⁸

The exemption applies to ALPRS images and data containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. This exemption would apply to personal identifying information held by any agency before, on, or after the passage of this exemption.

The bill further requires, in accordance with s. 119.15, F.S., this section is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, if it is not saved from repeal through reenactment by the Legislature.

Section 2 provides the public necessity statement for this bill. The public necessity statement provides the release of personal identifying information collected by an ALPRS could enable a third party to track a person's movements and that the disclosure of such information would be an invasion of personal privacy. The public necessity statement also states that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual's safety. Finally, the public necessity statement provides that the harm from public disclosure outweighs any public benefit.

The act will take effect on July 1, 2014.

¹⁸ Section 119.011(3), F.S., provides:

- (a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- (b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.
- (c) "Criminal intelligence information" and "criminal investigative information" shall not include:
1. The time, date, location, and nature of a reported crime.
 2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
 3. The time, date, and location of the incident and of the arrest.
 4. The crime charged.
 5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
 - a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
 6. Informations and indictments except as provided in s. 905.26.
- (d) The word "active" shall have the following meaning:
1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to Department of Highway Safety and Motor Vehicles, it may be difficult for agencies to identify and redact personal identifying information if a public records request is made.

VI. Technical Deficiencies:

According to Department of Highway Safety and Motor Vehicles, automatic license plate recognitions systems which are used for tolls and as red-light cameras may be included in this bill and that this exemption could potentially affect the usage of toll and red-light cameras. The Department of Highway Safety and Motor Vehicles did not provide more detailed information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.0777 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 20, 2014:

The CS/CS narrows the exemption to personal identifying information in images and data collected by ALPRS. The CS/CS also makes technical changes in the organization of the legislation and in the public necessity statement.

CS by Transportation on January 9, 2014:

The CS differs from the original bill in that it:

- Changes the standard of protection from “exempt” to “confidential and exempt”¹⁹ in order to specify conditions for disclosure.
- Specifies the following conditions under which the confidential and exempt information may be disclosed:
 - For any such information, by or to a criminal justice agency in the performance of its official duties.
 - For any information relating to a license registered to an individual, to such individual. Such information may not be released if it is relevant to an ongoing criminal investigation.

- 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 For an explanation of the difference between the standards, see supra note 9.