

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 Education

BILL: CS/SB 414

INTRODUCER: Education Committee and Senator Dean

SUBJECT: Public Records/Animal Medical Researchers

DATE: March 27, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	CS/Fav
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The provision is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill also includes a public necessity statement as required by the Constitution of the State of Florida.

The bill takes effect on July 1, 2014.

II. Present Situation:

Currently, there is no exemption from public record requirements for personal identifying information of individuals who conduct animal research or engage in activities related to animal research at a public research facility.

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.¹

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”²

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.³ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose.⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides requirements for creation of a new, or review of an existing, public record exemption.⁵ OGSRA requires that a new exemption or substantial amendment of an existing exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁶

When creating a new exemption, the exemption must state that the record is:

- Exempt from section 24, Article 1 of the Florida Constitution;
- Exempt from section 119.07(1) or section 286.011; and
- Repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.⁷

Additionally, OGSRA provides that a new exemption must serve an identifiable public purpose and be no broader than necessary to meet the public purpose it serves.⁸ An identifiable public

¹ Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term “public records” as “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.” Section 119.011(12), F.S.

² Section 119.07(1)(a), F.S.

³ Art. I, s. 24(c), Fla. Const.

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(4)(a), F.S.

⁸ Section 119.15(6)(b), F.S.

purpose is served if one of the following purposes is met and the Legislature finds that the purpose is “sufficiently compelling to override the strong public policy of open government” and cannot be achieved without the new exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program;
- Protects sensitive, personal information concerning individuals, and if such information were made available it would be defamatory to the individuals, cause unwarranted damage to the good name or reputation of the individuals, or would jeopardize the safety of the individuals; or
- Protects confidential information 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,” and disclosure of such information would injure the entity in the marketplace.⁹

III. Effect of Proposed Changes:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The bill would make such personal identifying information exempt from public record requirements when it is contained in the following records:

- Animal records, including animal care and treatment records;
- Research protocols and approvals;
- Purchasing, funding, and billing records related to animal research or activities;
- Animal care and use committee records;
- Facility and laboratory records related to animal research or activities.

The exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The public necessity statement provides that the exemption is necessary to protect researchers from physical and emotional harm from animal rights advocates who oppose the use of animals for medical research. The statement provides that certain university employees have been harassed and threatened after personal identifying information was disclosed pursuant to public records requests.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ *Id.*

B. Public Records/Open Meetings Issues:**Vote Requirement**

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 public record or public meeting exemption. The bill creates a new public record exemption and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption, therefore, it includes a public necessity statement.

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. Statutes Affected:

This bill substantially amends section 119.071 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 by Education March 25, 2014:

The committee substitute:

- Broadens the exemption by protecting “personal identifying information” as opposed to just home addresses, telephone numbers, dates of birth, and photographs as in SB 414.
- Expands the group of people to whom the exemption applies by including individuals “employed by, under contract with, or volunteering for a public research facility,” as opposed to “current or former researchers” as in SB 414.
- Expands the qualifying activity to include a research facility that “conducts animal research or is engaged in activities related to animal research” as opposed to requiring that the work be for the purpose of “conducting life-sustaining medical research” as in SB 414.
- Provides that personal identifying information is exempt from public records requirements when such information is located within a specific list of documents.

- B. **Amendments:**

None.