

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 993	FINAL HOUSE FLOOR ACTION:	HB
SPONSOR(S):	Higher Education & Workforce Subcommittee and Cummings	115 Y's	1 N's
COMPANION BILLS:	CS/SB 414	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 993 passed the House on April 23, 2014, and subsequently passed the Senate on April 25, 2014.

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

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

The bill provides for retroactive application of the public record exemption.

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 12, 2014, ch. 2014-37, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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.

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.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) 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

Furthermore, the Open Government Sunset Review Act² provides that a public record 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; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

District Court of Appeal

In 2013, the University of Florida (UF) received a public records request that sought records concerning the 33 non-human primates whose captivity had been documented in a United States Department of Agriculture report. UF produced the records with redactions, withholding the location of the animal research facility. UF argued that it can shield the location of certain public facilities when it determines that the nature of the public activities occurring at the facilities subject them to physical threat. The court held that the animal research facility at a university was not automatically exempt for disclosure

¹ Art. I, s. 24(c), Fla. Const. The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions. It requires the automatic repeal of such an October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

² Section 119.15, F.S.

under the Public Records Act. The university was directed to seek a public records exemption for the Legislature to protect the location of the animal research facilities.³

Effect of Proposed Changes

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

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

The bill provides for retroactive application of the public records exemption.⁴

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

³ See *Marino v. University of Florida*, 107 So.3d 1231 (Fla. 3d DCA 2013).

⁴ 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 as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

The bill may create a minimal fiscal impact on agencies because staff responsible for complying with public records requests could require training related to the public records exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.