

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/CS/SB 1324

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Latvala

SUBJECT: Public Records/Agency Personnel Information

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1324 creates and expands exemptions from the Public Records laws for personal identifying and location information of the commissioners of the Florida Commission on Offender Review, public defenders, conflict counsel, capital collateral counsel, prosecutors, law enforcement officers, and other investigatory personnel, as well as their siblings, parents, and cohabitants.

The information that is exempted for the commissioners, attorneys, law enforcement officers, and other personnel is expanded to include:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of the commissioners, attorneys, officers, and personnel are exempt under the bill.

The bill creates an exemption for the home address, telephone number, dates of birth as well as other identifying information for the spouses and children of capital collateral regional counsel,

their assistant counsel, and the commissioners and certain personnel of the Florida Commission on Offender Review.

The public necessity for the bill is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person.

The bill requires a two-thirds vote of the members present and voting for final passage of a newly created and expanded public record exemption.

The bill becomes effective on July 1, 2015. The exemptions created by the bill will be repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

II. Present Situation:

Threats to and Harassment of Law Enforcement and Other Government Personnel

Events that occur in people's lives as a result of criminal cases or civil actions involving alleged child abuse or neglect, for example, tend to raise anxiety or anger. Law enforcement officers and others who work in and around the court system sometimes find that they are targeted for violence, threats, and different forms of harassment by people they come into contact with in these volatile situations.

In recent years, law enforcement has become aware of a loosely organized group of people referred to as "sovereign citizens." According to reports, the group believes the government has no authority over them. A September 2011 FBI Law Enforcement Bulletin reported that since 2000, lone-offender "sovereign citizen extremists" have killed six law enforcement officers.¹ A recent Homeland Security intelligence assessment, produced in coordination with the FBI, counts 24 violent attacks related to the sovereign citizen movement. Because law enforcement officers and other government authority figures enforce the laws and regulations, the report indicates that they will remain the primary target of violence by this extremist group.²

The murders of an assistant district attorney as he walked to the courthouse, and just a few weeks later, the District Attorney and his wife in their home in Kaufman County, Texas shocked the community in 2013. Reports indicate that the killings were planned and carried out by a local public official as revenge for his prosecution for theft of public property.³

In 2011, one man was sentenced to 30 months in prison after pleading guilty to filing false liens against federal law enforcement employees in Florida. His targets were people involved in investigating and prosecuting him for tax fraud. He filed false liens against the property of the

¹ Federal Bureau of Investigation Law Enforcement Bulletin, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, September 2011. <http://leb.fbi.gov/2011/september> (site visited March 18, 2015).

² <http://www.cnn.com/2015/02/19/politics/terror-threat-homeland-security/> (site visited March 19, 2015).

³ <http://crimeblog.dallasnews.com/2013/05/suspect-in-kaufman-county-da-murders-waives-oral-arguments-in-appeal-of-case-law-enforcement-cites-as-motive-for-killings.html/>

prosecutors, investigators, and court personnel falsely claiming that he was owed \$48,489 billion from each individual.⁴

A Tallahassee man first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007.⁵ According to court documents, the man found Officer Garrett to be very rude, abusive, and unprofessional during the investigation.⁶ He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct.⁷ He was not satisfied with the department's response to his complaints.⁸ In 2008, the man posted personal information about Officer Garrett on a website, Ratemycop.com.⁹ The information about the officer was publicly available. The information posted on the website included the officer's marital status, number of children, home address, estimated value of her home, cell phone number, and e-mail address.¹⁰

Public Records

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.¹¹ The records of the legislative, executive, and judicial branches are specifically included in the Constitution.¹²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹³ guarantees every person's right to inspect and copy any state or local government public record¹⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁵

⁴ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited March 20, 2015).

⁵ Taken from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ A privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction." See http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148; from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373

¹⁰ *Id.*

¹¹ FLA. CONST., art. I, s. 24(a).

¹² *Id.*

¹³ Chapter 119, F.S.

¹⁴ 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." Section 119.011(2), F.S., defines "agency" to mean "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." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992).

¹⁵ Section 119.07(1)(a), F.S.

Only the Legislature may create an exemption to public records requirements.¹⁶ This exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁷ 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 provisions¹⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹

The OGSR 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.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁴ or
- It protects trade or business secrets.²⁵

¹⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates 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. *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. Attorney General Opinion 85-62, (August 1, 1985).

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ However, the bill may contain multiple exemptions that relate to one subject.

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

²⁵ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule.

Among the general exemptions set forth in s. 119.071, F.S., are exemptions for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the following persons:

- Active or former sworn or civilian law enforcement officers, including correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect;
- Personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and
- Current or former public defenders, criminal conflict and civil regional counsel and their assistants.

The information exempted also includes the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the persons' spouses and children, as well as the names and locations of schools and day care facilities attended by those persons' children.²⁹

²⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ Section 119.15(7), F.S.

²⁹ s. 119.071(4)(d)2.a., d., and j., F.S.

The commissioners and personnel of the Florida Commission on Offender Review, and capital collateral regional counsel and assistant capital collateral regional counsel are not subject to any public records exemptions, unlike public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. Therefore, the home addresses, telephone numbers, dates of birth and photographs of current or former capital collateral regional counsel and assistant capital collateral regional counsel, and commissioners and personnel of the Florida Commission on Offender Review are currently public record. In addition, the home address, telephone number, dates of birth and places of employment of the spouses and children of those persons are public.

III. Effect of Proposed Changes:

This bill creates a public records exemption for capital collateral regional counsel and assistant capital collateral regional counsel as well as the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review by adding those positions to the existing public record exemption for public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. The information made exempt for this group of commissioners, commission personnel, and attorneys includes: home addresses, telephone numbers, dates of birth, and photographs of the attorneys; home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of the commissioner, commission personnel, or attorney; and the location of the schools and day care facilities attended by the children of the commissioner, commission personnel, or attorney.

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to expand and create the following public records exemptions relating to the officers and personnel listed above, including the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review, capital collateral regional counsel and assistant capital collateral regional counsel:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, this bill creates exemptions for the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those commissioners, officers, and personnel.

The bill provides a retroactivity clause.

The bill also provides a statement of public necessity for the exemptions. The public necessity statement states that the Legislature finds that the commissioners and investigating and decision-making personnel of the Florida Commission on Offender Review, capital collateral regional counsel and assistant capital collateral regional counsel should be given the same protections as other similar attorneys, officers, or personnel, and that they are in danger of harm from disgruntled individuals. The Legislature also finds that it is a public necessity to expand the information related to current personnel and officers as well as creating new exemptions for their

families and cohabitants. The specific finding relevant to the public necessity is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The bill states that the Legislature further finds that the harm that may result from the release of the identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

All of the above exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates new public record exemptions and expands an existing exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates and expands public record exemptions; thus, it includes a public necessity statement which provides that the affected individuals are in danger of physical and emotional harm.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. These exemptions are no broader than necessary to accomplish their stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Agencies will have to train their staff on the new exemptions.

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/CS/CS by Rules on April 15, 2015:

- The CS adds the commissioners and investigating or decision-making personnel of the Florida Commission on Offender Review and their families to the list of persons who have their personal identifying information exempt from public records.
- The CS conforms the public necessity statement.

CS/CS by Governmental Oversight and Accountability on April 7, 2015:

- The CS added capital collateral regional counsel and their assistants and families to the list of criminal and civil attorneys who have their identifying information exempt from public records.
- The CS removes references to former residential addresses, residences in which a person frequently resides other than his or her home address, driver's license numbers and social security numbers.
- The CS clarified that personal email addresses were exempt.
- The CS provides for retroactive application of the exemptions.
- The CS conforms the public necessity statement.

CS by Criminal Justice on March 30, 2015:

- The CS exempts from public records the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel. The

home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of their parents, siblings, or cohabitants are also made exempt by the CS.

- The statement of public necessity reflects the inclusion of the information listed above for the public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel and their assistants.
- References to information identifying former places of employment are eliminated by the CS.

B. Amendments:

None.