

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 Criminal Justice

BILL: SB 1314

INTRODUCER: Senators Dean and Margolis

SUBJECT: Public Records/Witness to a Felony

DATE: February 5, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			GO	
3.			FP	

I. Summary:

SB 1314 creates a public records exemption for personal identifying information of a witness to a felony. Such information may not be released to a newspaper. The exemption applies to each witness for a period of 2 years following the commission of the felony observed by the witness.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution.

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 a public record exemption; thus, it requires a two-thirds vote for final passage.

II. Present Situation:

Public Records Exemptions for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements includes information revealing the identity of a confidential informant or a confidential source,¹ information revealing the identity of a victim of a child abuse offense,² and information revealing the identity of a victim of any sexual offense.³

¹ Section 119.071(2)(f), F.S.

² Section 119.071(2)(h)1.a., F.S.

³ Section 119.071(2)(h)1.b., F.S.

Witness to a Crime

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.⁴ The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.⁵ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.⁶ Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police. Twelve detectives within the Hillsborough County area have been quoted in the media as stating witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.⁷

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

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.⁸ The records of the legislative, executive, and judicial branches are specifically included.⁹

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹⁰ guarantees every person's right to inspect and copy any state or local government public record¹¹ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹²

⁴ Dan Sullivan, "Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders" (October 29, 2012), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited on February 2, 2016); Sue Carlton, "Solutions to street violence elusive amid anti-snitching culture" (June 2, 2015), Tampa Bay Times, available at <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited on February 2, 2016).

⁵ Stephanie Slifer, "Dad believes son was killed in Tampa drive-by shooting for talking to cops" (June 2, 2015), CBS News, available at <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited on February 2, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ FLA. CONST., art. I, s. 24(a).

⁹ *Id.*

¹⁰ Ch. 119, F.S.

¹¹ 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).

¹² Section 119.07(1)(a), F.S.

Only the Legislature may create an exemption to public records requirements.¹³ This exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁴ 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.¹⁵ 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.¹⁶ 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 provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

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 exemptions.¹⁹ 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.²⁰

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes 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.
- The release of 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.
- It protects trade or business secrets.²²

In addition, the Legislature must find that the purpose of the exemption overrides Florida’s public policy strongly favoring open government.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *Id.*

¹⁵ *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). Attorney General Opinion 85-62, (August 1, 1985).

¹⁶ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

¹⁷ However, the bill may contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ 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 s. 119.15(2), F.S.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.²³ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. These 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?²⁴

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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.²⁶

III. Effect of Proposed Changes:

The bill creates s. 119.071(2)(m), F.S., to provide that the personal identifying information of a witness to a felony is exempt from s. 119.07(1), F.S., and article I, section 24(a), of the Florida Constitution. Such information may not be released to a newspaper, as that term is described in s. 50.011, F.S. The exemption applies to each witness for a period of 2 years following the commission of the felony observed by the witness.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.²⁷ This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a felony, including disclosure to a newspaper, could have a chilling effect on persons stepping forward and providing their accounts of felony crimes that have been witnessed.
- A witness to a felony may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.

²³ Section 119.15(6)(a), F.S.

²⁴ Section 119.15(6)(a)1.-6., F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ Section 119.15(7), F.S.

²⁷ FLA. CONST., art. I, s. 24(c).

- A witness may be less likely to call a law enforcement officer and report a crime if his or her personal identifying information is made available in connection with the felony that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the felony if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2016.

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 a public record 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 a public record exemption and includes a public necessity statement.

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. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

An exemption from public records requirements does not render a document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings.²⁸

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁸ See *Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”); *B.B. v. Department of Children and Family Services*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”).