

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 752

INTRODUCER: Rules Committee, Governmental Oversight and Accountability Committee and Senator Abruzzo

SUBJECT: Public Records/Office of Inspector General Identifying and Location Information

DATE: February 10, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Kim</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/SB 752 exempts from public inspection and disclosure certain personal identifying information of a current or former employee of an agency's office of inspector general or internal audit department. The exemption applies to those employees who perform certain auditing and investigative duties. The exemption also covers an agency employee's spouse and children.

The bill states that it is a public necessity to protect such information because their activities can result in termination of, and criminal sanctions against, other persons. Agency personnel have been subject to threats, and agencies have had to institute safety measures.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2021, unless reenacted by the Legislature. The bill goes into effect upon becoming law.

A two-thirds vote of each house is required for the passage of the bill.

II. Present Situation:

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” 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 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

State Agency Office of Inspector General

Section 20.055(2), F.S., establishes an office of inspector general in each state agency, which is charged with promoting accountability, integrity, and efficiency in government. The office of an inspector general at an agency is also required to coordinate audits, investigations, and management reviews pursuant to s. 20.055(2)(d), F.S., and coordinate efforts to prevent and detect fraud and abuse in programs pursuant to s. 20.055(2)(e), F.S.

III. Effect of Proposed Changes:

CS/CS/SB 752 amends s. 119.071, F.S., to exempt from public inspection and disclosure the home address, telephone numbers, dates of birth, and photographs of any current or former employee of an agency’s office of inspector general or internal audit department whose duties include auditing or investigation the following:

- Waste;
- Fraud;
- Abuse;
- Theft;
- Exploitation; or
- Other activities that could lead to criminal prosecution or administrative discipline.

The bill also exempts from public inspection and disclosure the spouse’s and children’s name, home address, telephone numbers, dates of birth, and place of employment. The names and locations of the school or daycare of an employee’s children are also exempt.

The bill requires that the employee must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

The bill also includes a public necessity statement, as required by Article I, section 24(c) of the Florida Constitution. The bill states that it is a public necessity to protect such information because these employees and their families may be subject to revenge perpetrated by people who have been investigated or audited. The bill states that internal audits can lead to termination, wage garnishment and criminal prosecution. Agency personnel whose duties include conducting

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

internal audits have been threatened by the public, and agencies have had to institute safety measures such as posting pictures of individuals who have made threats, installing security cameras, and calling law enforcement. Agency personnel and their families may be targets of revenge and their identification and location information should be exempt from public inspection and copying.

The bill goes in to effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The public necessity statement supports the breadth of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to redact more information if this exemption passes. The costs associated with these redactions will be absorbed by the respective governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill 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 by Rules on February 10, 2016:

The CS\CS does the following:

- Provides that the exemption applies to employees of an agency's offices of inspector general or internal auditing department with certain duties; and
- Removes the photographs of spouses and children from the exemption.

CS by Government Oversight and Accountability on January 19, 2016:

The CS does the following:

- Narrows the public records exemption to only agency staff who perform internal audits rather than all staff members of an agency's office of the inspector general.
- Removes references to social security numbers since that information is confidential and exempt under current law.
- Enhances and strengthens the public necessity statement with examples of how and why internal auditing staff have been threatened.

B. Amendments:

None.