

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 Children, Families, and Elder Affairs

BILL: SB 68

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Staff and Volunteers of Domestic Violence Centers

DATE: February 2, 2021

REVISED: 02/03/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 68 amends s. 119.071(4)(d), F.S., creating a new exemption from public records disclosure for specified personal information of staff and volunteers of domestic violence centers certified by the Department of Children and Families (DCF) under ch. 39, F.S., and specified personal information relating to their spouses and children.

The bill exempts the following information from public records disclosure:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Name, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and child; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill makes findings that the new exemption from public records disclosure is a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024 in accordance with s. 119.15, F.S., unless the statute is reviewed and reenacted by the Legislature before that date. This is the same sunset review date as the other exemptions in s. 119.071(4)(d), F.S., will be reviewed.

There is no anticipated fiscal impact on state, county or municipal governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies to the official business 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

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.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹ However, an exemption may be reviewed under the Open Government Sunset Review Act prior to the fifth year since enactment.

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

The Act 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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²⁷

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4)(a) and (b), F.S.

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁸ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁹

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.³⁰ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.³¹

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.³²

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.³³

**Public Records Exemptions for Specified Agency Personnel and Their Families
(s. 119.071(4)(d), F.S.)**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include, in part:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of DCF and the Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;³⁴
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁵

²⁸ Section 119.071(4)(a)1., F.S.

²⁹ Section 119.071(4)(a), F.S.

³⁰ Section 119.071(5)(a)5., F.S.

³¹ Section 119.071(5)(a)6.f. and g., F.S.

³² Section 119.071(4)(b)1., F.S.

³³ Section 119.071(4)(b)2., F.S.

³⁴ Section 119.071(4)(d)2.a., F.S.

³⁵ Section 119.071(4)(d)2.b., F.S.

- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations;³⁶
- Current or former certified firefighters;³⁷
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³⁸
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³⁹
- Current or former code enforcement officers;⁴⁰
- Current or former guardians ad litem;⁴¹
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴²
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴³
- County tax collectors;⁴⁴
- Current or former certified emergency medical technicians and paramedics;⁴⁵
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴⁶ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴⁷

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee’s information.⁴⁸ Further, all of these exemptions have retroactive application.⁴⁹

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁰ telephone numbers,⁵¹ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

³⁶ Section 119.071(4)(d)2.c., F.S.

³⁷ Section 119.071(4)(d)2.d., F.S.

³⁸ Section 119.071(4)(d)2.e., F.S.

³⁹ Section 119.071(4)(d)2.f., F.S.

⁴⁰ Section 119.071(4)(d)2.i., F.S.

⁴¹ Section 119.071(4)(d)2.j., F.S. Guardians ad litem are volunteers who offer their services to the program.

⁴² Section 119.071(4)(d)2.l., F.S.

⁴³ Section 119.071(4)(d)2.m., F.S.

⁴⁴ Section 119.071(4)(d)2.n., F.S.

⁴⁵ Section 119.071(4)(d)2.q., F.S.

⁴⁶ Section 119.071(4)(d)2.s., F.S.

⁴⁷ Section 119.071(4)(d)2.t., F.S.

⁴⁸ Section 119.071(4)(d)3., F.S.

⁴⁹ Section 119.071(4)(d)4., F.S.

⁵⁰ Section 119.071(4)(d)1.a., F.S., defines “home addresses” to mean “the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.”

⁵¹ Section 119.071(4)(d)1.b., F.S., defines “telephone numbers” to include “home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.”

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

Domestic Violence Centers

A domestic violence center means an agency whose primary mission is to provide services to victims of domestic violence.⁵² Currently, Florida has 41 certified domestic violence centers that are the leading providers of domestic violence services. They provide crisis counseling and support services to victims of domestic violence and their children.⁵³

The DCF is tasked with performing specified duties and functions with respect to domestic violence under ch. 39, F.S. Section 39.903, F.S., states the DCF must:

- Operate the domestic violence program and coordinate and administer statewide activities related to the prevention of domestic violence.
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter.
- Have the right to enter and inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification to effectively evaluate the state of compliance with minimum standards.
- Promote the involvement of certified violence centers in the coordination, development, and planning of domestic violence programming in the circuits.
- Coordinate with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation.
- Cooperate with, assist in, and participate in, programs of other properly qualified state agencies, including any agency of the federal government, schools of medicine, hospitals,

⁵² Section 39.902(2), F.S. Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Further, s. 741.28(3), F.S., defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit."

⁵³ The Department of Children and Families, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited January 27, 2021).

and clinics, in planning and conducting research on the prevention of domestic violence and the provision of services to clients.

- Contract with an entity or entities for the delivery and management of services for the state's domestic violence program if the DCF determines that doing so is in the best interest of the state.
- Consider applications from certified domestic violence centers for capital improvement grants and award those grants in accordance with s. 39.9055, F.S.
- Adopt by rule procedures to administer this section, including developing criteria for the approval, suspension, or rejection of certification of domestic violence centers and developing minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

Services provided free of charge by domestic violence centers include emergency shelter, 24-hour crisis and information hotline, safety planning, counseling, case management, child assessments, information and referrals, education for community awareness, and training for law enforcement and other professionals, and other ancillary services such as relocation assistance, daycare, and transitional housing.⁵⁴

Domestic violence centers employ staff and rely on volunteers to provide these services to victims. A domestic violence advocate is an employee or a volunteer who receives training and provides direct services to victims of domestic violence.⁵⁵ A volunteer is an unpaid staff member who provides direct or indirect services for a domestic violence center. All employees and volunteers receive some degree of training on domestic violence.⁵⁶

Staff, including volunteers, are required to submit to a background screening, except personnel who assist on an intermittent basis for less than 10 hours per month if a person who meets the screening requirement is always present and has the volunteer within his or her line of sight.⁵⁷ Some also require personal reference letters.⁵⁸ As a practical matter, domestic violence centers generally require background screens for all volunteers, such as the centers in Baker County,⁵⁹ Broward County,⁶⁰ and Escambia County.⁶¹

⁵⁴ *Id.*

⁵⁵ Section 90.5036, F.S.; Rule 65H-1.011(9), F.A.C., states "'domestic violence advocate' means an employee or volunteer of a certified domestic violence center who: provides direct services to individuals victimized by domestic violence; has received 30 hours of domestic violence core competency training; and, has been identified by the domestic violence center as an individual who may assert a claim to privileged communications with domestic violence victims under section 39.905, F.S."

⁵⁶ Rule 65H-1.011(19), F.A.C., states "'volunteer' means unpaid staff members trained in the dynamics of domestic violence who provide direct and indirect services to those seeking and receiving services from a domestic violence center."

⁵⁷ Section 39.001(2), F.S.

⁵⁸ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited January 31, 2021).

⁵⁹ Hubbard House, *How do I get started?*, available at <https://www.hubbardhouse.org/getstarted> (last visited January 28, 2021).

⁶⁰ Women in Distress of Broward County, Inc. Jim & Jan Moran Family Center, *Interested in becoming a volunteer?*, available at <https://www.womenindistress.org/what-you-can-do/volunteer/> (last visited January 31, 2021).

⁶¹ Family House of Northwest Florida, Inc., *Volunteers Make It Happen!*, available at <https://favorhouse.org/page/Volunteer.html> (last visited January 28, 2021).

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)2., F.S., exempting certain information pertaining to current or former staff and volunteers of domestic violence centers certified by DCF under ch. 39, F.S.

The bill exempts specific information from public records requirements for the above-mentioned personnel including the:

- Home addresses, telephone numbers, places of employment, dates of birth, and photographs of such personnel;
- Name, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and child; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

A custodian of a record who is not the employer of the person covered by the exemption must maintain the exempt status of the information if the covered person submits a written request for maintenance of the exemption to the custodial agency.

This exemption applies to information held by an agency before, on, or after the effective date of the exemption.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2024, unless the statute is reviewed and reenacted by the Legislature before that date.

The bill also provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure specified information of certain agency personnel and their families. The public necessity statement notes:

[t]he Legislature finds...[domestic violence centers' staff, volunteers] and their family members are at a heightened risk of physical and emotional harm from perpetrators of domestic violence who have contentious reactions to actions taken by such personnel to house and protect victims to actions taken by such personnel to house and protect victims of domestic violence and limit further harm to such activities. The Legislature further finds that it is necessary to provide safeguards to staff and volunteers who are offering their time to protect victims of domestic violence. Without such protection, individuals may be less willing to volunteer or work for such centers, thus reducing the pool of resources and assistance available to address the already significant needs of victims of domestic violence.

The DCF reports that the law would provide some level of protection to the persons covered under the bill who are at risk of or who have been threatened with harm from perpetrators of domestic violence.⁶²

⁶² The DCF, *Agency Analysis for SB 68*, p. 2, January 11, 2021 (On file with the Senate Committee on Children, Families, and Elder Affairs).

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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 state tax shared 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 for final passage of a bill creating or expanding an exemption to the public records requirements. SB 68 enacts a new exemption for specified public records relating to domestic violence centers' staff, volunteers, and their spouse and children and the bill will require, therefore, two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires the law state with specificity the public necessity to justify a new or substantially amended exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect staff, volunteers, and their spouse and children from perpetrators of domestic violence who pose a risk of harm to them, and reduce the risk that individuals may be less willing to volunteer or work for domestic violence centers as a result of such risk. The bill exempts only those persons who are at risk of harm and their relevant location or identifying information which could pose a harm to them. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁶³

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 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.

⁶³ Section 119.07(2) and (4), F.S.