

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 1046

INTRODUCER: Senator Hooper

SUBJECT: Public Records/Law Enforcement Geolocation Information

DATE: January 24, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1046 creates a public records exemption for law enforcement geolocation information held by a law enforcement agency. This is information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle.

The bill contains a statement of public necessity for the exemption, which provides findings in support of the exemption and indicates that it is to be applied retroactively. The bill is subject to the Open Government Sunset Review Act and the exemption will be repealed on October 2, 2027, unless reviewed and reenacted by the Legislature. Because the bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The effective date of the bill is July 1, 2022.

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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 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., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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 custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ The exemption must state

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

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

⁷ Section 119.07(1)(a), F.S.

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).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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:

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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., provides that exemptions required by federal law or 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.

²⁰ Section 119.15(6)(b), F.S.

- 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 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Geolocation Data

“Geolocation data is data collected via an electronic communications network or service that indicates the position of equipment used by people who are connected to the network or service.”²⁷ Some technologies that collect geolocation data include global positioning system (GPS) units and smartphones. In addition to including information on “latitude, longitude, and altitude of the equipment,” geolocation data can include the “time data was collected, direction of travel and other detailed information.”²⁸

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 *Subcommittee on Cybersecurity, Privacy and Data: Geolocation Data*, Task Force on Autonomous Vehicles (Oregon), available at <https://www.oregon.gov/ODOT/Get-Involved/Documents/Geolocation%20data%20ER%207-22.pdf> (last visited on Jan. 18, 2022).

²⁸ *Id.*

One concern identified with the use of geolocation data is that the “data can be used to identify people and discern details of where they live, work and travel, potentially enabling stalking and harassment and revealing sensitive destinations...”²⁹

Geolocation Data on Law Enforcement Officers and Law Enforcement Vehicles

Geolocation data on a law enforcement officer may be available to the agency employing the officer. For example, an important source for location information on the officer could be an agency-issued or agency-owned cellphone.³⁰ The agency may have the ability to obtain location information from the cellphone provider either through a built-in GPS capability in the cellphone, a smart app, or through other available means. This location information may include real-time or historical location information.

Geolocation information on a law enforcement officer may also be available to the law enforcement agency if the officer is driving or riding in an agency-issued or agency-owned vehicle equipped with GPS technology or other means of locating the vehicle and tracking its movement.³¹ There are multiple reasons why a law enforcement agency would track the location and movement of its vehicles including:

- “Identify[ing] which police vehicle is closest to a crime scene and [ensuring] those police officers stay within their assigned zone,” which “can also be helpful if a police officer ever goes missing on the job”;³² and
- “[Providing] directions and up-to-date traffic information, helping police officers get to the scene of a crime or emergency sooner.”³³

Geolocation Data Relating to the Home Address of a Law Enforcement Officer

Section 119.071(4)(d)2.a., F.S., in part, provides a public records exemption for:

- The home addresses of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency;
- The home addresses and places of employment of the spouses and children of such personnel; and
- The locations of schools and day care facilities attended by the children of such personnel.

The term “home addresses” means 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.*³⁴

²⁹ *Id.*

³⁰ See Marc Chase McAliister, *GPS and Cell Phone Tracking of Employees*, 70 Fla. L. Rev. 1265 (2019), available at <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1438&context=flr> (last visited on Jan. 19, 2022).

³¹ *Id.*

³² *How Police Use GPS for Personal and Vehicle Tracking*, BrickHouse Security, available at <https://www.brickhousesecurity.com/gps-trackers/how-police-use-gps/> (last visited on Jan. 19, 2022).

³³ *Id.*

³⁴ Section 119.071(4)(d)1.a., F.S. (emphasis provided by staff).

III. Effect of Proposed Changes:

The bill, which takes effect July 1, 2022, amends s. 119.071, F.S., to create a public records exemption for law enforcement geolocation information held by a law enforcement agency. The bill defines the term “law enforcement geolocation information” as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle.

The bill specifies that the exemption does not apply to uniform traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information.

Staff notes that there may be some overlap between the public records exemption created by the bill and the public record exemption in s. 119.071(4)(d)2.a., F.S., relating to home addresses of law enforcement personnel and home addresses and other specified location information of spouses and children of such personnel. However, the exemption created by the bill is not limited to the home address and location information specified in s. 119.071(4)(d)2.a., F.S.

Staff notes that the exemption may also act as a safeguard to protect some information that is likely exempt from public release under a current exemption but that may not be clearly identified as being associated with that exemption. For example, s. 119.071(2)(d), F.S., provides a public records exemption for any information revealing law enforcement surveillance techniques. This exemption doesn’t specifically mention law enforcement geolocation data, though that data may be relevant to identifying law enforcement surveillance techniques.

The bill contains a statement of public necessity for the exemption, which provides findings in support of the exemption and indicates that it is to be applied retroactively. The bill is subject to the Open Government Sunset Review Act and the new exemption will be repealed on October 2, 2027, unless reviewed and reenacted by the Legislature. Because the bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 chamber for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for law enforcement geolocation information held by a law enforcement agency, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth 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 purpose of the exemption created by the bill is articulated in the statement of public necessity:

The Legislature recognizes that the regular and unregulated release of law enforcement geolocation information can pose a danger to officers while on patrol, can potentially result in the exposure of law enforcement officers' residences, can release otherwise exempt surveillance and investigative techniques, and can inadvertently disclose information about private residents which would otherwise be exempt.

The exemption does not appear to be broader than necessary to accomplish the purpose of the law. The bill defines "law enforcement geolocation information" and also specifies records to which the exemption does not apply.

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:

None.

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.