

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 773 Pub. Rec./Law Enforcement Geolocation Information

SPONSOR(S): Government Operations Subcommittee, Criminal Justice & Public Safety Subcommittee, Willhite, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Government Operations Subcommittee	18 Y, 0 N, As CS	Villa	Toliver
3) Judiciary Committee			

SUMMARY ANALYSIS

Law enforcement personnel regularly confront persons that are a danger to public safety and who may seek to retaliate for being arrested or cited for a violation of law. To ensure the safety of law enforcement personnel and their families, the Legislature enacted s. 119.071(4)(d)2.a., F.S., which provides an exemption from disclosure pursuant to a public records request for the home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or civilian personnel employed by a law enforcement agency.

Global Positioning System (GPS) trackers are often installed in law enforcement vehicles or embedded in other equipment used by law enforcement officers, such as a radio or body cameras. If a law enforcement officer routinely takes his or her patrol vehicle home, the officer's GPS data, if released under a public records request, could disclose the location of the residence of a law enforcement officer. Furthermore, if such GPS data were disclosed to the public, it could divulge information about law enforcement surveillance and investigative techniques.

CS/HB 773 amends s. 119.071(4), F.S., to provide that law enforcement geolocation information held by a law enforcement agency before, on, or after the effective date of the bill is exempt from disclosure as a public record. The bill provides the exempt information must be released in the following instances:

- A federal, state, or local government entity requests law enforcement geolocation information in furtherance of its official duties.
- A person files a petition with the circuit court in the jurisdiction where the agency having custody of the requested law enforcement geolocation information is located specifying the reasons and public necessity for requesting such information and the court, upon a showing of good cause, issues an order authorizing the release of the law enforcement geolocation information.
- Law enforcement geolocation information is requested for use in a criminal or administrative proceeding.
- Geolocation information is contained in a uniform traffic citation, crash report, homicide report, arrest report, incident report, or any other official report issued by a law enforcement agency.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2027, unless reenacted by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state and local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2022.

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 or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.¹

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁴

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

Public Records Exemptions – Law Enforcement Personnel

Law enforcement personnel regularly confront persons that are a danger to public safety and who may seek to retaliate for being arrested or cited for a violation of law. To ensure the safety of law enforcement personnel and their families, the Legislature enacted s. 119.071(4)(d)2.a., F.S., which provides an exemption from disclosure pursuant to a public records request for the home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or civilian personnel employed by a law enforcement agency. The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouse or children of such law enforcement personnel is also exempt, as are the names and locations of schools and day care facilities attended by the children of such personnel.⁵

Global Positioning System Tracking

Global Positioning System (GPS) trackers are often installed in law enforcement vehicles or embedded in other equipment used by law enforcement officers, such as a radio or body camera.⁶ Knowing an

¹ Art. I, s. 24(c), FLA. CONST.

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ *Id.*

⁵ S. 119.071(4)(d)2.a., F.S.

⁶ Police Magazine, *GPS in Police Vehicles: Officer Safety or Big Brother Watching?*, <https://www.policemag.com/373629/gps-in-police-vehicles-officer-safety-or-big-brother-watching> (last visited Feb. 4, 2022).

officer's location can be useful when dispatching units to the scene of an emergency and for monitoring officer safety.⁷ However, if a law enforcement officer routinely takes his or her patrol vehicle home, the officer's GPS data, if released under a public records request, could disclose the location of the residence of a law enforcement officer. Furthermore, if such GPS data were disclosed to the public, it could divulge information about law enforcement surveillance and investigative techniques.

Effect of Proposed Changes

CS/HB 773 amends s. 119.071(4), F.S., to provide that law enforcement geolocation information held by a law enforcement agency before, on, or after the effective date of the bill is exempt⁸ from disclosure as a public record. The bill provides the exempt information must be released in the following instances:

- A federal, state, or local government entity requests law enforcement geolocation information in furtherance of its official duties.
- A person files a petition with the circuit court in the jurisdiction where the agency having custody of the requested law enforcement geolocation information is located specifying the reasons and public necessity for requesting such information and the court, upon a showing of good cause, issues an order authorizing the release of the law enforcement geolocation information. The bill provides that in determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of governmental performance and whether such information is available in other public records. If a court determines there is good cause to release the law enforcement geolocation information, the bill requires that such information must be viewed or copied under the direct supervision of the custodian of the record or his or her designee.
- Law enforcement geolocation information is requested for use in a criminal or administrative proceeding. The bill authorizes a court in a criminal or administrative proceeding, upon a showing of good cause, to restrict or otherwise control the disclosure of such information.
- Geolocation information is contained in a uniform traffic citation, crash report, homicide report, arrest report, incident report, or any other official report issued by a law enforcement agency.

The bill defines "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 is subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2027, unless the Legislature reenacts the exemption.

The bill provides a statement of public necessity as required by the Florida Constitution, stating that exempting geolocation information of law enforcement officers from disclosure is necessary because release of such information could compromise the safety of law enforcement officers, the integrity of surveillance or investigative techniques used by law enforcement, and the privacy of residents.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides an effective date of July 1, 2022.

⁷ *Id.*

⁸ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 statute. See Op. Att'y Gen. Fla. 04-09 (2004).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on law enforcement agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

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 or expanded 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 or expanded public record exemption. The bill creates a public record exemption, thus, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a new public records exemption to protect law enforcement officers and ensure the confidentiality of surveillance and investigative techniques, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it provided the public records exemption in the bill does not apply if:

- A federal, state, or local government entity requests law enforcement geolocation information in furtherance of its official duties.
- A person files a petition with the circuit court in the jurisdiction where the agency having custody of the requested law enforcement geolocation information is located specifying the reasons and public necessity for requesting such information and the court, upon a showing of good cause, issues an order authorizing the release of the law enforcement geolocation information.
- Law enforcement geolocation information is requested for use in a criminal or administrative proceeding.

On February 8, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that a law enforcement agency must release the exempt geolocation information under circumstances specified by the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.