

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

FINAL HOUSE FLOOR ACTION: 112 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 773 passed the House on March 7, 2022, as CS/SB 1046.

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.

The bill 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 exemption does not apply to such geolocation information that 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 provides the exempt information must be released in the following instances:

- Upon request from a state or federal law enforcement agency.
- When 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 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.
- When law enforcement geolocation information is requested for use in a criminal, civil, or administrative proceeding.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2027, unless reenacted by the Legislature.

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

The bill was approved by the Governor on May 12, 2022, ch. 2022-107, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

¹ Art. I, s. 24(c), Fla. Const.

² S. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ *Id.*

⁵ S. 119.071(4)(d)2.a., F.S.

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 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 the Bill

The bill 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 exemption does not apply to such geolocation information that 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 provides the exempt information must be released in the following instances:

- Upon a request from a state or federal law enforcement agency.
- When 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 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. 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.
- When law enforcement geolocation information is requested for use in a criminal, civil, or administrative proceeding. The bill authorizes a court in a criminal, civil, or administrative proceeding, upon a showing of good cause, to restrict or otherwise control the disclosure of such information.

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 became effective on May 12, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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 Mar. 9, 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 04-09 Fla. Op. Att'y Gen. (2004).

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.