

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 Governmental Oversight and Accountability

BILL: SB 216

INTRODUCER: Senator Burgess

SUBJECT: Public Records/Current and Former County and City Attorneys

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 216 exempts from public records copying and inspection requirements certain identifying information of current and former county attorneys, deputy county attorneys, assistant county attorneys, city attorneys, deputy city attorneys, and assistant city attorneys. Identifying information relating to their spouses and children is likewise exempt. The specific information made exempt from public records disclosure requirements includes:

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

The exemption does not apply to a current or former county attorney, deputy county attorney, assistant county attorney, city attorney, deputy city attorney, or assistant city attorney who qualifies as a candidate for election to public office.

A statement of public necessity is included in the bill as required by the State Constitution.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, consistent with the other agency personnel exemptions in s. 119.071(4)(d), F.S., unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

The bill is not expected to impact state and local government revenues and expenditures.

The bill is effective July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The state 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 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, chapter 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:

[a] ll 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

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

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 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

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).

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.

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 the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- 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

Public Records Exemptions for Specified Personnel and their Families

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

¹⁹ Section 119.15(3), F.S.

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.

- Active or former sworn or civilian law enforcement personnel employed by a law enforcement agency;²⁷
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²⁸
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²⁹
- Current or former certified firefighters;³⁰
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³¹
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³²
- Current or former code enforcement officers;³³
- Current or former guardians ad litem;³⁴
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³⁵
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³⁶
- County tax collectors;³⁷
- Current or former certified emergency medical technicians and paramedics;³⁸
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;³⁹
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers;⁴⁰ and
- Current or former staff of domestic violence centers, including domestic violence advocates.⁴¹

²⁷ Section 119.071(4)(d)2.a., F.S.

²⁸ Section 119.071(4)(d)2.b., F.S.

²⁹ Section 119.071(4)(d)2.c., F.S.

³⁰ Section 119.071(4)(d)2.d., F.S.

³¹ Section 119.071(4)(d)2.e., F.S.

³² Section 119.071(4)(d)2.f., F.S.

³³ Section 119.071(4)(d)2.i., F.S.

³⁴ Section 119.071(4)(d)2.j., F.S.

³⁵ Section 119.071(4)(d)2.l., F.S.

³⁶ Section 119.071(4)(d)2.m., F.S.

³⁷ Section 119.071(4)(d)2.n., F.S.

³⁸ Section 119.071(4)(d)2.q., F.S.

³⁹ Section 119.071(4)(d)2.s., F.S.

⁴⁰ Section 119.071(4)(d)2.t., F.S.

⁴¹ Section 119.071(4)(d)2.u., F.S.

The specified exempt information for each profession provided in s. 119.071(4)(d), F.S., varies among the professions. Generally, the home addresses,⁴² telephone numbers,⁴³ dates of birth of the specified personnel are exempt, as are the identifying information of their spouse and children, including place of employment, school and/or daycare facility. For many of the professions, photographs of the employee are exempt,⁴⁴ and in some instances, the photographs of the employee's spouse and children are exempt as well.⁴⁵

The employing agency or the employee must assert the right to the exemption by submitting a written and notarized request to each non-employer agency that holds the employee's information.⁴⁶ Further, all of these exemptions have retroactive application, applying to information held by an agency before, on, or after the effective date of the exemption.⁴⁷

The exemptions for specified agency personnel in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

Position of County Attorney and City Attorney

The term "county attorney" is not defined by statute, but is referenced in eight statutes as a local government employee expected to assist in the enforcement of various laws.⁴⁸ Similarly, the term "city attorney" is not defined by statute, but is referenced in four statutes, again as a local government employee expected to assist in the enforcement of various laws.⁴⁹

The duties of a county attorney or city attorney vary and are set by the governing board of the local government. The duties of an assistant county attorney or assistant city attorney are set by their respective county attorney or city attorney. As an example, one county defines the duties of its county attorney as follows:

- Employing and managing all personnel of the County Attorney's Office, establishing the organizational framework of the office, and supervising the conduct of all employees of the Office of the County Attorney.
- Providing legal advice and counsel to, and legal representation of the board of county commissioners and county departments, agencies, officers and employees on matters pertaining to the business of the county or in connection with the duties of the board, department, agency, officer or employee.

⁴² 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."

⁴³ 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."

⁴⁴ See, e.g., s. 119.071(4)(d)2.1, F.S.

⁴⁵ See, e.g., s. 119.071(4)(d)2.a., F.S.

⁴⁶ Section 119.071(4)(d)3. and 4., F.S.

⁴⁷ Section 119.071(4)(d)6., F.S.

⁴⁸ Sections 60.05, 373.609, 381.0012, 409.2554, 499.002, 499.81, 509.285, and 705.106, F.S.

⁴⁹ Sections 60.05, 409.2554, 705.106, and 849.44, F.S.

- Representing the county in all litigation, administrative hearings, mediation, appeals and judicial proceedings in which the county, the board, or a county department or agency under the jurisdiction of the board is a party.
- Providing legal advice and counsel to, and legal representation of, constitutional officers of the county and its employees on matters pertaining to the respective business and duties of the constitutional officers and employees at the request of constitutional officers.
- Representing any constitutional officer or employee of the officer in any litigation, administrative hearing, mediation, appeal or judicial proceeding upon request of said constitutional officer.
- Advising and providing recommendations to the board regarding the need for the selection of any special counsel to be retained by the county to provide legal representation in specified matters.
- Supervising, monitoring and coordinating, as appropriate, the representation, services and work of any special counsel.
- At the request of the board, the county attorney is hereby authorized to represent the board or a board member when the board or a member is acting as a separate agency or board or in an ex-officio capacity or is otherwise officially representing the county at the direction of the Board.
- Providing legal advice and counsel to and representation of any other State or local governmental office, unit, or entity as may be required by law or interlocal agreement entered into by the board.⁵⁰

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2.v., F.S. to exempt specified personal information of current and former county attorneys, deputy county attorneys, assistant county attorneys, city attorneys, deputy city attorneys, and assistant city attorneys. Personal information relating to their spouses and children is likewise exempt. The specific personal information made exempt from public records disclosure requirements includes:

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

The exemption does not apply to a current or former county attorney, deputy county attorney, assistant county attorney, city attorney, deputy city attorney, or assistant city attorney who qualifies as a candidate for election to public office.

Section 2 provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that due to the responsibilities of county attorneys, deputy county attorney, assistant county attorney, city attorney, deputy city attorney, and assistant city attorney and their involvement with legal enforcement proceedings, such attorneys have faced threats and retribution by defendants and other persons on numerous occasions. The public necessity statement further provides that there have also been incidents of stalking of such attorneys and their spouses and children.

⁵⁰ Sarasota County ordinance 2-63.

Section 3 provides that the bill takes effect on July 1, 2023.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2024, consistent with the other agency personnel exemptions in s. 119.071(4)(d), F.S., unless reviewed and saved from repeal through reenactment by the Legislature.

Please see section “VII. Related Issues” for a discussion of the shortened review and repeal date of this bill.

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 State 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. This bill enacts a new exemption for the personal identifying and location information of current and former county attorneys, assistant county attorneys, city attorneys, and assistant city attorneys, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State 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 State 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 the attorneys and their families from the danger of becoming a victim of stalking, emotional abuse, and physical violence. This bill exempts only certain personal identifying information from the public records requirements, consistent with 21 similar exemptions. 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:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian without a signed waiver if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of such attorneys because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may experience additional workload associated with redacting the exempt information prior to releasing a record. However, the workload should be absorbed as part of the day-to-day agency responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the first year after enactment instead of the 5th year.

However, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.⁵¹

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.

⁵¹ *Fla. Carry, Inc. v. Univ. of Fla.*, 180 So.3d 137, 146 (Fla. 1st DCA, 2015), citing *New v. Miami Herald Publ'g Co.*, 462 So.2d 821, 824 (Fla. 1985) and *Scott v. Williams*, 107 So.3d 379, 389 (Fla. 2013).