

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 Education Pre-K -12

BILL: SPB 7020

INTRODUCER: For consideration by the Education Pre-K -12 Committee

SUBJECT: Public Records/Mobile Suspicious Activity Reporting Tool

DATE: March 13, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brick</u>	<u>Bouck</u>		Pre-meeting

I. Summary:

SPB 7020 saves from repeal the current exemption from public records disclosure requirements relating to the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement, law enforcement agencies, or school officials.

The bill expands the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Education (DOE), and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

The exemptions from open meetings and public records requirements stands repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill takes effect upon becoming 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

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, section 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:

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

Mobile Suspicious Activity Reporting Tool (FortifyFL)

FortifyFL, the mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials.²⁷ FortifyFL is a computer and mobile phone application free to all public and private schools in Florida. District and school-level administrators receive and must respond to tips from FortifyFL. Any tips submitted via FortifyFL are sent to local school district and law enforcement officials until action is taken.²⁸

The reporting party may provide his or her report anonymously. If the reporting party chooses to disclose his or her identity, it remains confidential and exempt from public records disclosure

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 943.082(1), F.S.

²⁸ Florida Department of Education, *FortifyFL School Safety Awareness Program* (Oct. 26, 2018) available at <https://info.fl DOE.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf>, at 1-2.

requirements. Information received through the mobile suspicious activity reporting tool is also exempt.²⁹

If, following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the Internet protocol (IP) address of the device on which the tip was submitted will be provided to law enforcement agencies for further investigation and the reporting party may be subject to criminal penalties. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report will remain anonymous.³⁰

The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement (FDLE), law enforcement agencies, or school officials is confidential and exempt from public records disclosure requirements. Any other information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials is also exempt from public records disclosure requirements. The exemptions from public records requirements are subject to the requirements of the Act and will be repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³¹

The bill includes a public necessity statement that provides a rationale for the exemption. This rationale recognizes that the public records exemption for the identity of those individuals reporting potentially harmful or threatening activities encourages individuals to act and not be fearful that their identity will be revealed. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identity is protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

The public necessity statement also provides that the public records exemption for any other information received through the mobile suspicious activity reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety. The public records exemption will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs. The public records exemption is also needed to protect the privacy of other individuals who are included in the report.

Open Government Sunset Review Findings and Recommendations

In September 2022, the Senate Committee on Education Pre-K – 12 and the House of Representatives Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to the 67 county sheriffs and district school superintendents. The survey sought information regarding the need to maintain the exemption related to identities and other

²⁹ Section 943.082, F.S.

³⁰ Section 943.082(1)(c), F.S.

³¹ Section 943.687(8), F.S.

information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials.

Responses to the questionnaire were submitted by 42 of the district school superintendents and 16 of the county sheriffs. No respondent recommended allowing the exemption to sunset.

Of the respondents, two superintendents recommended expanding the exemption to include all reporting tools utilized by the school district, and another recommended expanding the exemption to include all agencies involved in the prosecution of a false tip. The remaining 33 respondents to whom the exemption was applicable recommended reenacting the exemption as is. Several respondents identified some overlap with other exemptions provided in law, particularly more general exemptions from inspection or copying of public records³² and exemptions from public access or disclosure of security and firesafety systems;³³ however, none of the institutions that identified overlap recommended merging the exemptions, given the specific and heightened protection for information that would identify a person who reports through FortifyFL potentially harmful or threatening activities.

Staff of the Senate Committee on Education Pre-K – 12 and the House of Representatives Government Operations Subcommittee jointly met with staff from the Florida Department of Education (DOE), Office of Safe Schools, and the FDLE in August 2022 to discuss the exemption from public records disclosure requirements relating to identities and other information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials. The FDLE recommended reenacting the exemption as is.³⁴

The staff of the Florida DOE, Office of Safe Schools recommended reenacting the exemption but also indicated that the Florida DOE receives and holds information through the mobile suspicious activity reporting tool. Therefore, it is recommended to expand the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida DOE, and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

³² Section 119.071, F.S., provides for general exemptions from inspection or copying of public records regarding agency administration, criminal intelligence and criminal investigation, and specified personal information. Additionally, the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g (FERPA), protects the personal identifying information in educational records of students.

³³ Sections 119.071(3)(a), F.S., provides that security or firesafety system plans held by an agency are confidential and exempt. Section 281.301, F.S., provides that information relating to the security or firesafety systems for specified property is confidential and exempt. Section 286.0113, F.S., provides that a specified portion of a meeting that would reveal a security or firesafety system plan is exempt. Section 1004.055, F.S., provides that specified security data or information from technology systems owned, under contract, or maintained by a state university or a FCS institution is confidential and exempt.

³⁴ Email, Florida Department of Law Enforcement (Feb. 3, 2023).

III. Effect of Proposed Changes:

SPB 7020 saves from repeal the current exemption relating to the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement, law enforcement agencies, or school officials.

The bill expands the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Education (DOE), and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

The bill provides that the public records exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless the Legislature reviews and reenacts the exemptions by that date.

The bill takes upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Education. 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 purpose of the law is to protect the identity of those individuals reporting potentially

harmful or threatening activities to encourage those individuals to act and not be fearful that their identity will be revealed.

Additionally, the law is intended to protect information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety.

This bill exempts only the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Education, the Florida Department of Law Enforcement, law enforcement agencies, or school officials from the public records requirements. 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.

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 943.082 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.
