

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 Rules

BILL: CS/SB 7002

INTRODUCER: Governmental Oversight and Accountability Committee; and Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: OGSR/Department of Military Affairs/United States Department of Defense

DATE: January 26, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Bellamy</u>	<u>Proctor</u>		MS Submitted as Comm. Bill/Fav
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u>Bellamy</u>	<u>Kruse</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7002 delays the repeal date from October 2, 2026, to October 2, 2031, for the current public records exemption relating to records held by the Department of Military Affairs (DMA) which:

- Are stored in a United States Department of Defense (DoD) system of records;
- Are transmitted using a DoD network or communications device; or
- Pertains to the DoD, pursuant to 10 U.S.C. s. 394.¹

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reenacted by the Legislature. The bill saves the exemption from repeal by delaying the scheduled repeal date, thereby maintaining the exempt status of the information until October 2, 2031.

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

The bill takes effect upon becoming a law.

¹ Federal law 10 U.S.C. s. 394(a), which addresses military cybersecurity operations, provides for the Secretary of Defense to develop, prepare, and coordinate; make ready all armed forces for purposes of; and, when appropriately authorized to do so, conduct, military cyber activities or operations in cyberspace, including clandestine military activities or operations in cyberspace.

II. Present Situation:

Florida Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² This 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.³

Additional requirements and exemptions that relate to public records are found in various statutes and rules, depending on the branch of government involved.⁴ For instance, Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature. Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁵ Lastly, ch. 119, F.S., the Public Records Act, provides requirements for public records held by executive agencies and constitutes the main body of public records laws.

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person. Each agency has a duty to provide access to public records.⁶

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 connection 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

² FLA. CONST. art. I, s. 24(a).

³ *Id.*; see also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

⁴ Chapter 119, F.S., does not apply to legislative or judicial records. See, *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁵ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁶ Section 119.01(1), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

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.¹⁴ 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.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁷ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁸ public records or open meetings exemptions, with specified exceptions.¹⁹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.²⁰ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.²¹ An exemption serves an identifiable public 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:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;²²

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁷ Section 119.15, F.S.

¹⁸ 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.

¹⁹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(b)1., F.S.

- 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;²³ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁴

The Act also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the Act directs the Legislature to carefully 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.²⁶ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁷

General exemptions from the public records requirements are typically contained in the Public Records Act.²⁸ Specific exemptions are often placed in the substantive statutes which relate to a particular agency or program.²⁹

Federal System of Records

The Freedom of Information Act

The Freedom of Information Act (FOIA)³⁰ primarily governs the public's access to federal agency records. Under FOIA, an agency must promptly provide copies of government records to the public upon receiving a request.³¹ The request for such records must reasonably describe the records and be made in accordance with the agency's established procedural rules for the request.³² Federal agencies are exempt from disclosing records that are categorized into one of the following nine exemptions:

- Information authorized by executive order to be considered secret for national security or defense purposes.
- Related solely to internal personnel rules and practices of an agency.
- Information exempted by another federal statute.
- Trade secrets or financial information obtained from a person and privileged or confidential.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ Section 119.15(6)(a), F.S.

²⁶ FLA. CONST. art. I, s. 24(c). *See generally* s. 119.15, F.S.

²⁷ Section 119.15(7), F.S.

²⁸ *See, e.g.,* s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of exams administered by a governmental agency for the purpose of licensure).

²⁹ *See, e.g.,* s. 213.053(2), F.S. (exempting from public disclosure information received by the DOR, including investigative reports and information).

³⁰ 5 U.S.C. s. 552.

³¹ 5 U.S.C. s. 552(a)(3)(A).

³² 5 U.S.C. s. 552(a)(3)(A)(i) and (ii).

- Inter-agency or intra-agency communication that would not be available by law to a party other than an agency in litigation with the agency, provided the privilege shall not apply to records created 25 years or more before the date on which the records were requested.
- Personnel and medical files of an individual which would be an invasion of personal privacy.
- Certain information compiled by law enforcement.
- Information pertaining to examination, operating, or condition reports on behalf of or for the use of an agency responsible for regulation of financial institutions.
- Geological and geophysical information and data, including maps, concerning wells.³³

Information from a federal agency that is publicly available may be accessed by searching FOIA.gov.³⁴ If information is not available, an individual may submit a FOIA request to an agency's FOIA Office.³⁵

The Privacy Act of 1974 (Privacy Act)

The Privacy Act governs how personal identifying information held by federal agencies must be stored, may be accessed, and when the government may use or disclose such information.³⁶ A record is defined in the Privacy Act as

any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.³⁷

A federal agency that maintains a system of records³⁸ may not disclose such record without prior written consent of the individual or by written request of the individual to whom the record pertains.³⁹ There are 12 exemptions for certain records and system of records⁴⁰ and 12 exceptions to the written consent requirement.⁴¹ The Privacy Act authorizes disclosure in the following instances:

- To the officers and employees of the agency which maintains the record, who need the record in the performance of their duties;
- When the disclosure is made under the FOIA;
- For an established routine use;
- To the Census Bureau to carry out a census or survey;

³³ 5 U.S.C. s. 552(b).

³⁴ FOIA.gov, *Search Government Websites*, <https://www.foia.gov/search.html> (last visited Aug. 8, 2025).

³⁵ FOIA.gov, *How do I make a FOIA Request*, <https://www.foia.gov/how-to.html> (last visited Aug. 8, 2025).

³⁶ Meghan M. Stuessy, Congress.gov, *The Privacy Act of 1974: Overview and Issues for Congress*, CRS Report Number R47863, available at <https://www.congress.gov/crs-product/R47863> (last visited August 8, 2025).

³⁷ 5 U.S.C. s. 552a(4).

³⁸ The term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. 5 U.S.C. s. 552a(a)(5).

³⁹ 5 U.S.C. s. 552a(b).

⁴⁰ 5 U.S.C. s. 552a(d)(5), (j), and (k).

⁴¹ 5 U.S.C. s. 552a(b).

- For statistical research or reporting without release of individually identifying data, provided that adequate notice is given;
- To the National Archives and Records Administration as a record of historical value;
- To another agency or an instrumentality of the government for a civil or criminal law enforcement activity;
- To an individual under a compelling circumstance affecting health or safety, and the person whose health or safety is affected is sent a notification of the disclosure;
- To either House of Congress, or one of its committees or subcommittees;
- To the Comptroller General in the course of duties of the General Accountability Office;
- Pursuant to the order of a court of competent jurisdiction; or
- To a consumer reporting agency.⁴²

Florida Department of Military Affairs (DMA)

The DMA is a state agency created under ch. 250, F.S.⁴³ The DMA provides management oversight and administrative support to the Florida National Guard (FNG).⁴⁴ The head of the DMA is the Adjutant General.⁴⁵ The Adjutant General must be a federally-recognized officer of the FNG, have served in the FNG for five of the last ten years, have attained the rank of colonel or higher, and be appointed by the Governor subject to Senate confirmation.⁴⁶

As Commander in Chief,⁴⁷ the Governor may order the FNG to active state duty in order to preserve the public peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or attacks, respond to an emergency, or respond to any need for emergency aid to civil authorities.⁴⁸ The FNG may also be activated by the Federal government.⁴⁹

Employees of the DMA, as part of their state government duties, use the U.S. Department of Defense information network (DoDIN). DoDIN is the DoD's "end-to-end set of electronic information capabilities and associated processes for collecting, processing, storing, disseminating, and managing digital information on-demand to warfighters, policy makers, and support personnel, including owned and leased communications and computing systems and services, software (including applications), data, security services, and other associated services, and National Security Systems."⁵⁰

⁴² United States Department of Legal Affairs, *Privacy Reminders, Privacy Act "Exceptions"*, available at https://www.dla.mil/Portals/104/Documents/GeneralCounsel/FOIA/PrivacyReminders/FOIA_Reminder12.pdf?ver=pmD36CFRR8zarytVh_aWCg%3d%3d (last visited Oct. 2, 2025).

⁴³ Section 250.05, F.S.

⁴⁴ Department of Military Affairs, *The Florida Department of Military Affairs*, available at <https://dma.myflorida.com/> (last visited Aug. 8, 2025).

⁴⁵ Section 250.05(3), F.S.

⁴⁶ Section 250.10(1), F.S.

⁴⁷ Section 250.06, F.S.

⁴⁸ Section 250.05(4), F.S.

⁴⁹ 10 U.S.C. s. 12406.

⁵⁰ Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, *10 USC § 130e Decisions*, Department of Defense Information Network; October 19, 2018, PDF, available at https://pelt.defense.gov/Portals/140/FOIA/FOIA_Resources/10-19-2018_Determination.pdf (last visited Aug. 8, 2025).

In 2018, the DoD determined information regarding the architecture, engineering, and cybersecurity assessments of DoDIN system was exempt from public disclosure.⁵¹

Public Records related to the Florida Department of Military Affairs

Federal versus State Exemptions

Although portion of the DoDIN information is exempt pursuant to the FOIA, the FOIA does not apply to State agencies.⁵² Without a state exemption from public records disclosure requirements, the DMA employees that use the DoDIN may create a state agency record that is not exempt from public record disclosure pursuant to ch. 119, F.S. These records include information on military missions, units, deployments, troop concentrations, rules on the use of force, highly deployable units, and personal identifying information of the FNG servicemembers and the DoD employees.⁵³ The public necessity statement of the exemption created in s. 119.0712(4), F.S., stated that the dissemination of these records could pose a national security risk or harm the safety of the FNG servicemembers.⁵⁴

Department of Military Affairs Public Record Exemption

In 2021, CS/CS/CS/HB 1069, was passed and signed into law.⁵⁵ This public record exemption created s. 119.0712(4), F.S., and aligned Florida law with the FOIA and the Privacy Act. This makes records held by the DMA exempt from public records inspection and copying requirements which:

- Are stored in a DoD system of records;
- Are transmitted using a DoD network or communication device; or
- Pertain to the military cybersecurity operations law 10 U.S.C. s. 394.⁵⁶

Any information not made exempt by s. 119.0712(4), F.S., may be disclosed only after the DMA makes redactions in accordance with federal and state law.⁵⁷ The public may still access records pertaining to the DoD by using the FOIA submission process.

The public record exemption is set to be repealed on October 2, 2026, unless saved from repeal by the Legislature.

⁵¹ The exemption from public disclosure was based on exemption 3 of FOIA, which incorporates into the FOIA certain nondisclosure provisions that are contained in other federal statutes, because the information is exempted from public disclosure by 10 U.S.C. s. 130e. *Id.*; see Dep't of Justice, *Exemption 3*, in DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT (Dec. 30, 2024), available at https://www.justice.gov/oip/foia-guide/exemption_3/dl (last visited Jan. 7, 2025) (explaining exemption 3 of FOIA).

⁵² *Wallace v. Guzman*, 687 So.2d 1351, 1353 (Fla. 3d DCA 1997); see also *Hous. Auth. of Daytona Beach v. Gomillion*, 639 So.2d 117, 118 (Fla. 5th DCA 1994).

⁵³ Department of Military Affairs, *2021 Agency Legislative Bill Analysis* (Jan. 21, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁵⁴ *Id.*

⁵⁵ Section 119.0712(4), F.S.; ch. 2021-86, s. 1 Laws of Fla.

⁵⁶ *Id.*

⁵⁷ Section 119.0712(4), F.S.

Open Government Sunset Review of the Public Records Exemption For the DoD Information Held by the DMA

During the 2025 interim, Senate and House staff jointly met with the DMA to review the public records exemption in s 119.0712(4), F.S.

Public Record Exemption Findings

The DMA did not report any issue interpreting or applying the exemption and noted that the exemption was used to protect records that could pose a national security risk or harm the safety of the FNG servicemembers.

Since December of 2022, the DMA has received 58 public records requests, 12 of which, in whole or part, were exempt from public records disclosure requirements pursuant to s. 119.0712(4), F.S. The DMA's preference is to preserve the current language of the exemption and to remove the sunset provision.⁵⁸

III. Effect of Proposed Changes:

CS/SB 7002 continues a public records exemption which is otherwise scheduled to be repealed on October 2, 2026, by delaying the scheduled repeal until October 2, 2031. The public records exemption applies to information held by the DMA that is stored in a DoD system of records, transmitted using a DoD network or communications device; or pertains to the DoD, pursuant to 10 U.S.C. s. 394.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 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 disclosure requirements. The bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

⁵⁸ Email from Colonel Jason Hunt, Commander, 83rd Troop Command, Florida National Guard, to Tim Proctor, Staff Director, Senate Committee on Military and Veterans Affairs, Space, and Domestic Security. (September 20, 2025) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. The bill does not create or expand an exemption and thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, in pertinent part, requires the review to consider (a) what specific records are affected by the exemption and (b) what is the identifiable public purpose or goal of the exemption.⁵⁹ The Act further allows an exemption to be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption is no broader than necessary to meet the public purpose it serves.⁶⁰

The “identifiable public purpose” for the public records disclosure exemption in this bill is noted in the public necessity statement contained in ch. 2021-86, s. 2, Laws of Fla. That statement provides:

The Legislature finds that it is a public necessity that information held by the Department of Military Affairs and stored in a United States Department of Defense system of records, transmitted using a United States Department of Defense network or communications device, or pertaining to the United States Department of Defense, pursuant to 10 U.S.C. s. 394, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such sensitive military information within these systems such as information on military missions, units, personnel, deployments, and troop concentration could adversely affect military members and national security. For this reason, it is necessary that such sensitive military information held by the Department of Military Affairs be protected from disclosure to the same degree that is required under federal law. Therefore, the Legislature finds that it is a public necessity that such information be made exempt from public record requirements and that such exemption be applied retroactively.

Based on this public necessity statement, it appears the intent of the Legislature is to protect sensitive military information, such as information on military missions, units,

⁵⁹ Section 119.15((6)(a)1. and 3., F.S.

⁶⁰ Section 119.15(6)(b), F.S.

personnel, deployments, and troop concentrations that could affect military members and national security.

The statutory language authorizing the exemption identifies the specific records affected. In this instance, the exemption applies to “information held by the Department of Military Affairs that is stored in a United States Department of Defense system of records, transmitted using a United States Department of Defense network or communication device, or pertaining to the United States Department of Defense, pursuant to 10 U.S.C. s. 394.” This statutory language appears to exempt any information, rather than sensitive military information only, stored in a DoD system of records or transmitted via a DoD computer or electronic device. As written, this public records exemption may be overbroad to meet the public purpose of protecting sensitive military information. If the DMA interprets the exemption to apply to sensitive military information only, the exemption may be applied consistently with the more narrowly-defined public purpose.

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:

The private sector will continue to be subject to the cost associated with an agency’s review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

The bill substantially amends section 119.0172(4) of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on January 12, 2026:

Delays the scheduled repeal date of the current public records exemption for certain information held by the Department of Military Affairs until October 2, 2031.

- B. **Amendments:**

None.