



# The Florida Senate

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Committee on Governmental Oversight and Accountability

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## **OPEN GOVERNMENT SUNSET REVIEW OF SECTION 119.071(1)(G), F.S., U.S. CENSUS BUREAU ADDRESS INFORMATION**

### **Issue Description**

Section 119.071(1)(g), F.S., provides that United States Census Bureau address information held by an agency pursuant to the Local Update of Census Address Program (LUCA Program) is confidential and exempt from the public-records requirements found in s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution. The public-records exemption authorizes release of the protected information to another agency or governmental entity in the furtherance of its duties and responsibilities under the LUCA Program. The exemption also provides that an agency performing duties and responsibilities under the LUCA Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

This public-records exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will expire on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This report reviews the public-records exemption relating to United States Census Bureau address information held by an agency pursuant to the LUCA program in accordance with the Open Government Sunset Review Act.

### **Background**

#### **Florida Public-Records Law**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, s. 24 of the State Constitution.

<sup>3</sup> Chapter 119, F.S.

Unless specifically exempted, all agency<sup>4</sup> records are available for public inspection. The term “public record” is broadly defined to mean:

. . . 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 connection with the transaction of official business by any agency.<sup>5</sup>

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.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

The Open Government Sunset Review Act (the Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or

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<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . 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.”

<sup>5</sup> s. 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Art. I, s. 24(c) of the State Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c) of the State Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> s. 119.15, F.S.

- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>15</sup>

The Act also requires the Legislature to consider the following:

- 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?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>16</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### Local Update of Census Addresses Program

The Local Update of Census Addresses Program (LUCA Program) was a decennial census geographic partnership program designed to allow the United States Census Bureau to benefit from local knowledge in developing its Master Address File<sup>17</sup> for the 2010 census.<sup>18</sup> The LUCA Program was made possible by the Census Address List Improvement Act of 1994, which authorizes designated representatives of local and tribal governments to review the Master Address File.<sup>19</sup>

The LUCA Program required that participating governments designate a LUCA liaison to review the portion of the census address list covering the area under the participating government's jurisdiction.<sup>20</sup> The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.<sup>21</sup>

<sup>15</sup> s. 119.15(6)(b), F.S.

<sup>16</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

<sup>17</sup> The Master Address File is an inventory of all addresses and physical/location descriptions assembled by the Census Bureau, including their geographic locations, and serves as the source of addresses for mailing and delivering decennial census forms and for physically locating the addresses when necessary. See Prepared Statement of Robert M. Groves, Director of the U.S. Census Bureau, *2010 Census: Master Address File, Issues and Concerns*, [http://www.census.gov/newsroom/releases/pdf/Groves\\_House\\_Testimony\\_10-21\\_Final.pdf](http://www.census.gov/newsroom/releases/pdf/Groves_House_Testimony_10-21_Final.pdf) (last viewed August 10, 2011).

<sup>18</sup> U.S. Census Bureau, *2010 Decennial Census Local Update of Census Addresses (LUCA)*, <http://www.census.gov/geo/www/luca2010/luca.html> (last viewed August 10, 2011).

<sup>19</sup> Public Law 103-430.

<sup>20</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed August 10, 2011).

<sup>21</sup> Federal law requires the U.S. Census Bureau to maintain the confidentiality of certain information that it collects. This confidentiality helps to ensure that the bureau maintains the most accurate data possible. To uphold the law, the bureau requires that all individuals who work with the confidential information must abide by a confidentiality and security agreement. Title 13 of the United States Code provides for the confidential treatment of census-related information. Census information includes: everything on a completed or partially completed questionnaire or obtained in a personal or telephone interview; individual addresses maintained by the LUCA Program liaisons review; and maps that identify the location of individual housing units and/or group quarters.

LUCA Program participants were required to review a set of security guidelines and to sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.<sup>22</sup>

The LUCA Program provided clear guidelines for local government participation and confidentiality; however, the federal law was less clear regarding confidentiality at the state level. Therefore, the Florida Legislature created the public-records exemption under review.<sup>23</sup>

### Public-Records Exemption Under Review

Section 119.071(1)(g), F.S., provides that United States Census Bureau address information held by an agency pursuant to the LUCA Program is confidential and exempt from the public-records requirements found in s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution. The public-records exemption authorizes release of the protected information to another agency or governmental entity in the furtherance of its duties and responsibilities under the LUCA Program. The exemption also provides that an agency performing duties and responsibilities under the LUCA Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

The stated public necessity for exempting United States Census Bureau address information held by an agency pursuant to the LUCA Program is based upon a legislative finding that the exemption was necessary to allow agencies to participate in the LUCA Program.<sup>24</sup> The statement of public necessity notes

... Pursuant to the Local Update Census Addresses Program, Title 13, United States Code, Pub. L. No. 103-430, United States Census Bureau address information must be kept confidential. Further, all individuals directly involved in reviewing such information and any individuals with access to such information are required to sign a confidentiality agreement to preserve the confidentiality of the address information. Without this exemption, agencies would be prevented from participating in the program. As such, the effective and efficient administration of the Local Update of Census Addresses Program would be hindered at the federal level. ...

The statement of public necessity also notes that prevention of agency participation could result in a negative fiscal impact on the state.<sup>25</sup>

This public-records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>26</sup>

## Findings and/or Conclusions

The LUCA Program officially ended as of March 31, 2010.<sup>27</sup> Therefore, there is no need to continue the associated public-records exemption for United States Census Bureau address information held by an agency pursuant to the LUCA Program.

The United States Census Bureau is currently working on a Geographic Support System Initiative in support of the 2020 Census to improve address coverage, continually update spatial features, and enhance quality assessment and measurement.<sup>28</sup>

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<sup>22</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed August 10, 2011).

<sup>23</sup> Chapter 2007-250, L.O.F.

<sup>24</sup> Chapter 2007-250, s. 2, L.O.F.

<sup>25</sup> *Id.*

<sup>26</sup> Chapter 2007-250, s. 1, L.O.F.

<sup>27</sup> U.S. Census Bureau, *LUCA Closeout Phase*, [http://www.census.gov/geo/www/luca2010/luca\\_co.html](http://www.census.gov/geo/www/luca2010/luca_co.html), (last viewed August 10, 2011).

<sup>28</sup> U.S. Census Bureau, *Geographic Support System (GSS) Initiative*, <http://www.census.gov/geo/www/gss/index.html> (last viewed August 10, 2011).

## Options and/or Recommendations

Based upon the review findings that the LUCA Program is no longer in existence and that there is therefore no need to continue the associated public-records exemption, Senate professional staff recommends repeal of the public-records exemption for United States Census Bureau address information held by an agency pursuant to the LUCA Program.