

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1526

INTRODUCER: Senator Thrasher

SUBJECT: Public Records/Department of Legal Affairs

DATE: March 31, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1526 provides the public records exemptions for CS/SB 1524, which establishes the Florida Information Protection Act of 2014. The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs and affected individuals when a security breach occurs and personal information held in electronic form is illegally accessed.

The bill provides that certain information reported to the Department of Legal Affairs relating to security breaches is confidential and exempt from public inspection pursuant to statute and the State Constitution and provides a statement of public necessity as required by law.

**II. Present Situation:**

**Public Records - Access**

The state's public records laws, which guarantee access to government records, are contained in both the State Constitution and Florida Statutes.

***State Constitution***

The State Constitution, in article I, section 24, guarantees every person the right to inspect or copy any public record of:

- The legislative, executive, and judicial branches;
- Each agency or department of those branches;
- Counties, municipalities, and districts; and
- Each constitutional officer, board, and commission, or entity created pursuant to law or the Constitution.<sup>1</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

The Legislature is authorized, however, to exempt records by general law from that provision if the law:

- States with specificity the public necessity that justifies the exemption; and
- Is no broader than necessary to accomplish the stated purpose of the law.

The legislation proposing the exemption requires a two-thirds vote of each chamber for passage.<sup>2</sup>

### *State Statute*

Section 119.07(1), F.S., requires every person who has custody of a public record to 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 public records.<sup>3</sup>

### **Public Records - Requirements**

An exemption from the disclosure requirements must serve an identifiable public purpose and be no broader than necessary to meet the public purpose it serves.<sup>4</sup> An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program that would be significantly impaired without the exemption;
- Protects sensitive personal information that would be defamatory or cause unwarranted damage to a person's reputation or would jeopardize the person's safety if released; however, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature such as trade secrets.

### **Florida Information Protection Act of 2014 – CS/SB 1524**

CS/SB 1524 creates the Florida Information Protection Act.<sup>5</sup> The bill<sup>6</sup> requires that certain commercial and governmental entities provide notice to the Department of Legal Affairs and affected individuals when a breach of security occurs involving the access of personal information.

A breach of security is defined as an unauthorized access of data in electronic form containing personal information. Personal information includes a person's name in combination with: a social security number; a driver license or identification card number, passport number, military identification number or other similar number issued on a government document used to verify identity; a financial account number or credit or debit card number in combination with a security or access code or password necessary to gain access to a person's financial account; certain medical information; or a person's health insurance policy number or subscriber identification number or similar identifier identification. Personal information also includes a

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<sup>2</sup> FLA. CONST. art. I, s. 24(c).

<sup>3</sup> Section 119.07(1)(a), F.S.

<sup>4</sup> Section 119.15(5)(b), F.S.

<sup>5</sup> Much of the information in CS/SB 1524 is currently contained in s. 817.5681, F.S., which is repealed in that bill.

<sup>6</sup> See the Bill Analysis and Fiscal Impact Statement of CS/SB 1524 by the Commerce and Tourism Committee for more detailed information about the bill.

username or e-mail address in combination with a password or security question and answer that permits access to an online account.

### **III. Effect of Proposed Changes:**

#### **Confidential and Exempt Information**

Under the bill, all information received by the Department of Legal Affairs pursuant to notification of a security breach or received pursuant to a subsequent information by the Department of Legal Affairs or another federal or state law enforcement agency is confidential and exempt from public records requirements as long as the investigation is considered to be an active investigation.

While an investigation is considered active, the Department of Legal Affairs may disclose confidential and exempt information:

- In furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the department determines that the release would assist in notifying the public or locating or identifying a person that the department believes to have been a victim of the breach; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

After the completion of an investigation, the following information shall remain confidential and exempt from public record requirements:

- All information to which another public records exemption applies;
- Personal information as defined in the bill;
- A computer forensic report;
- Information that would reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's trade secrets or proprietary information.

#### **Statement of Public Necessity**

The bill provides a statement of public necessity as required in the State Constitution. The statement provides that the public records exemption is necessary because the original breach of an electronic system is likely the result of criminal activity which will probably lead to additional criminal activity. A release of the notice information obtained during an investigation would likely contain proprietary information, which if released, could result in identifying areas in which the system is vulnerable and additional breaches of the system. By exempting this information, the security of the breached system is protected as well as the personal information of individuals stored in the system. Additionally, information obtained during an investigation is likely to contain personal information that could be used for identity theft or financial harm if disclosed. The exemption protects the security of the personal information by excluding it from public access.

The bill contains a contingent effective date. It takes effect on the same date that CS/SB 1524, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

The bill creates a public records exemption that must be approved by a two-thirds vote of the membership of each house of the Legislature.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The Open Government Sunset Review Act is contained in s. 119.15, F.S. The act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. This bill creates a public record exemption for information relating to the newly created Florida Information Protection Act of 2014, however, the bill does not provide for automatic repeal of the exemption on October 2, 2019 in accordance with the Open Government Sunset Review Act.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 501.171 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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