

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: CS/SB 1324

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Public Records/Agency Personnel Information

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1324 creates exemptions from the Public Records law for personal identifying and location information of public defenders, conflict counsel, capital collateral counsel, prosecutors, law enforcement officers and other investigatory personnel, as well as their siblings, parents, and cohabitants.

The information that is exempted includes:

- Residential addresses, including former residences and residences in which the person frequently resides other than the person's home address;
- E-mail addresses;
- Driver license numbers;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those officers and personnel are exempt under the bill.

The public necessity for the bill is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person.

The bill requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption.

The bill becomes effective on July 1, 2015. The exemptions created by the bill will be repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

II. Present Situation:

Threats to and Harassment of Law Enforcement and Other Government Personnel

Events that occur in people's lives as a result of criminal cases or civil actions involving alleged child abuse or neglect, for example, tend to raise anxiety or anger. Law enforcement officers and others who work in and around the court system sometimes find that they are targeted for violence, threats, and different forms of harassment by people they come into contact with in these volatile situations.

In recent years, law enforcement has become aware of a loosely organized group of people referred to as "sovereign citizens." According to reports, the group believes the government has no authority over them. A September 2011 FBI Law Enforcement Bulletin reported that since 2000, lone-offender "sovereign citizen extremists" have killed six law enforcement officers.¹ A recent Homeland Security intelligence assessment, produced in coordination with the FBI, counts 24 violent attacks related to the sovereign citizen movement. Because law enforcement officers and other government authority figures enforce the laws and regulations, the report indicates that they will remain the primary target of violence by this extremist group.²

The murders of an assistant district attorney as he walked to the courthouse, and just a few weeks later, the District Attorney and his wife in their home in Kaufman County, Texas shocked the community in 2013. Reports indicate that the killings were planned and carried out by a local public official as revenge for his prosecution for theft of public property.³

In 2011, one man was sentenced to 30 months in prison after pleading guilty to filing false liens against federal law enforcement employees in Florida. His targets were people involved in investigating and prosecuting him for tax fraud. He filed false liens against the property of the prosecutors, investigators, and court personnel falsely claiming that he was owed \$48,489 billion from each individual.⁴

A Tallahassee man first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007.⁵ According to court documents, the man found Officer Garrett to be

¹ Federal Bureau of Investigation Law Enforcement Bulletin, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, September 2011. <http://leb.fbi.gov/2011/september> (site visited March 18, 2015).

² <http://www.cnn.com/2015/02/19/politics/terror-threat-homeland-security/> (site visited March 19, 2015).

³ <http://crimeblog.dallasnews.com/2013/05/suspect-in-kaufman-county-da-murders-waives-oral-arguments-in-appeal-of-case-law-enforcement-cites-as-motive-for-killings.html/>

⁴ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited March 20, 2015).

⁵ Taken from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373.

very rude, abusive, and unprofessional during the investigation.⁶ He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct.⁷ He was not satisfied with the department's response to his complaints.⁸ In 2008, the man posted personal information about Officer Garrett on a website, Ratemycop.com.⁹ The information about the officer was publicly available. The information posted on the website included the officer's marital status, number of children, home address, estimated value of her home, cell phone number, and e-mail address.¹⁰

Public Records

The Florida Constitution provides every person 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 of persons acting on their behalf.¹¹ The records of the legislative, executive, and judicial branches are specifically included.¹²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹³ guarantees every person's right to inspect and copy any state or local government public record¹⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁵

Only the Legislature may create an exemption to public records requirements.¹⁶ This exemption must be created by general law and must specifically state the public necessity justifying the

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ A privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction." See http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148; from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373

¹⁰ *Id.*

¹¹ FLA. CONST., art. I, s. 24(a).

¹² *Id.*

¹³ Chapter 119, F.S.

¹⁴ Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" 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." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992).

¹⁵ Section 119.07(1)(a), F.S.

¹⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla.2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to

exemption.¹⁷ 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 provisions¹⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁹

The Open Government Sunset Review Act²⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.²¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.²²

Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule.

Among the general exemptions set forth in s. 119.071, F.S., are exemptions for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the following persons:

- Active or former sworn or civilian law enforcement officers, including correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect;
- Personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and
- Current or former public defenders, criminal conflict and civil regional counsel and their assistants.

The information exempted also includes the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the persons' spouses and children, as well as the names and locations of schools and day care facilities attended by those persons' children.²³

anyone other than the persons or entities specifically designated in the statutory exemption. Attorney General Opinion 85-62, (August 1, 1985).

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ However, the bill may contain multiple exemptions that relate to one subject.

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15, F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(5)(b), F.S.

²³ s. 119.071(4)(d)2.a., d., and j., F.S.

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to include the following public records exemptions relating to the officers and personnel listed above:

- Residential addresses, including former residences and residences in which the person frequently resides other than the person's home address;
- E-mail addresses;
- Driver license numbers;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those officers and personnel are exempt under the bill.

This bill also creates an exemption for the same information for capital collateral regional counsel and assistant capital collateral regional counsel. Capital collateral regional counsel and assistant capital collateral regional counsel are not subject to any public records exemptions, unlike public defenders, assistant public defenders, criminal conflict and civil regional counsel and criminal conflict and civil regional counsel. Therefore the home address, telephone number, dates of birth and places of employment of the spouses and children of capital collateral regional counsel and assistant capital collateral regional counsel will remain public.

In its bill analysis, the Florida Department of Law Enforcement (FDLE) noted that it will be difficult to verify what constitutes a former residence or a place a person frequently resides other than the person's home. FDLE's analysis also stated that it will be difficult for an agency to verify who will be included in an exemption for parent, siblings and cohabitants. In addition, FDLE stated the bill does not specify that personal email addresses, rather than all email addresses should be exempt.²⁴

Some of the listed information is already subject to a public records exemption and may not need to be included in this bill. Currently, driver's license numbers are exempt pursuant to s.

²⁴ 2015 FDLE Legislative Analysis SB 1324 Dated March 9, 2015, available on <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx>

119.0712(2)(b), F.S.²⁵ In addition, Social Security numbers held by an governmental entity are exempt pursuant to s. 119.071(5)(a) F.S. and s.119.071(4)(a), F.S.²⁶

The bill also provides a statement of public necessity for the exemptions. The specific finding relevant to the public necessity is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The bill states that the Legislature further finds that the harm that may result from the release of the identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record

²⁵ Section 119.0712(2), F.S. provides: DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) For purposes of this subsection, the term “motor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c)1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

²⁶ 119.071(4)(a)1. provides that for personnel of a government entity “[t]he social security numbers of all current and former agency employees which are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number. For people who are not employees of a government entity, s. 119.071(5)(a)5., which states “[s]ocial security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement which provides that the affected individuals are in danger of physical and emotional harm.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. This exemption may be broader than necessary. For example, the private email address may be appropriate to exempt, however, there appears to be no reason why a current state employee's work email address should be exempt. The bill makes residences in which a former official frequently resides other than his or her home exempt from public disclosure. This provision is not defined and therefore could have broad applicability.

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:

None.

VII. Related Issues:

The bill does not contain a retroactivity clause, so the bill will exempt information prospectively only.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 Criminal Justice on March 30, 2015:

- The CS exempts from public records the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel. The home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of their parents, siblings, or cohabitants are also made exempt by the CS.
- The statement of public necessity reflects the inclusion of the information listed above for the public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel and their assistants.
- References to information identifying former places of employment are eliminated by the CS.

B. Amendments:

None.