

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: SB 7030

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Agency Personnel Information

DATE: February 7, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Harmsen</u>	<u>McVaney</u>		GO Submitted as Comm. Bill/Fav
1. <u>Harmsen</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 7030 amends s. 119.071(4)(d), F.S., to continue the series of current public records exemptions that protect the personal identifying information of certain state agency personnel and their spouses and children, such as home addresses, telephone numbers, dates of birth, and locations of childcare facilities used. These exemptions are subject to the Open Government Sunset Review Act (OGSR) and are currently scheduled to repeal on October 2, 2024.

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

The bill takes effect on October 1, 2024.

II. Present Situation:

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.¹ 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.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ 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.

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 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c).

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 Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the 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.¹⁸ 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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- It protects sensitive, personal information, the release of which would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ 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?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is 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.²⁵

Public Records Exemptions for Agency Personnel

Specific personal identifying information of enumerated agency personnel is exempt from public inspection and copying requirements. The personal identifying information that is subject to a public records exemption under s. 119.071(4)(d), F.S., varies by an employee's or officer's position but may include some or all of the following information about the employee/officer and his or her spouse and children: name, home address,²⁶ phone number,²⁷ date of birth, photos, and name and location of workplace and school.

The basis for these exemptions rests on the nature of qualifying employment, which may subject the individual to close contact with individuals who may be a threat to them, and may subject them or their family members to harassment, threats, or other harms.²⁸

The agency personnel who are covered by the public records exemption in s. 119.071(4)(d), F.S., are:

- Active or former sworn law enforcement personnel, including correctional and correctional probation officers;
- Department of Children and Families personnel with specific investigative duties;
- Department of Health personnel who support the investigation of child abuse or neglect;
- Department of Revenue or local government employees whose responsibilities include revenue collection and enforcement or child support enforcement;

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- 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ "Home address" is defined in s. 119.071(4)(d)1.a., F.S., as the "dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

²⁷ Telephone numbers include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." Section 119.071(4)(d)1.c., F.S.

²⁸ See, Ch. 2019-12, s. 2, Laws of Fla. (recognizing that "such personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel..."); Ch. 2015-37, s. 2, Laws of Fla. ("...In 2013, a[n impaired practitioner] program participant with a history of alcohol abuse and cocaine dependence traveled 250 miles across the state to confront his compliance monitor in the driveway of her home...As a result of th[is] incident and other telephone threats, the Legislature finds that release of identifying and location information could place an impaired practitioner consultant..., or the spouses and children of such consultants or their employees in danger of being physically or emotionally harmed..."); Ch. 2010-71, s. 2, Laws of Fla. ("Thus, the children of guardians ad litem could become a potential target for acts of revenge.").

- Department of Financial Services personnel with specific investigative duties;
- Office of Financial Regulation's Bureau of Financial Investigations personnel whose duties include specific investigative duties;
- Current or former firefighters;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors;
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;
- Current or former local government agency or water management district human resources, labor relations, or employee relations managers or directors, if their employment involves specific personnel-related duties, such as labor negotiations or firing;
- Current or former code enforcement officers;
- Current or former guardians ad litem;
- Current or former juvenile probation officers and their related personnel, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;
- Current or former Department of Business and Professional Regulation investigators or inspectors;
- County tax collectors;
- Current or former Department of Health personnel whose duties include or result in the determination of social security disability benefits or certain investigative duties;
- Current or former impaired practitioner consultants or their employees, if they were retained by a state agency;
- Current or former emergency medical technicians or paramedics;
- Current or former personnel who are employed in a state agency's office of inspector general or internal audit department, if the employee's duties include the auditing or investigation of specific activities that could lead to criminal or administrative discipline;
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;
- Current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets specific standards and requirements of ch. 39, F.S.; and
- Current or former staff and domestic violence advocates of domestic violence centers that are certified by the Department of Children and Families.

Redacting Personal Identifying Information

Records that include exempt information about the above-specified personnel, their spouses, and their children (minor or adult) may be held by, among others, their employing agency, clerks of court and comptrollers, county tax collectors, property appraisers, school districts, and law enforcement agencies.

Both the employing agency and the employee or officer are authorized to request the redaction of exempt information by submitting a written and notarized request for maintenance of the

exemption to each agency that holds the employee’s or officer’s, spouse’s, or child’s information.²⁹

Type of Official Records that may Include Personal Identifying Information ³⁰		
<ul style="list-style-type: none"> • Affidavits • Agreements • Arrest Photos • Assignments • Bonds • Certificates • Certified Copy of Judgements • Criminal Records • Death Certificates • Deeds 	<ul style="list-style-type: none"> • Easements • Financing Statements • Liens • Lis Pendens • Maps • Marriage Records • Mortgages • Military Discharges • Notices • Orders 	<ul style="list-style-type: none"> • Plats • Powers of Attorney • Probate Documents • Releases • Restitution Orders • Restrictions • Satisfactions • Transfers of Security • Utility Service Documents

There is no stated expiration for this public records exemption when held by agencies. However, such documents, when held by a clerk of the circuit court (Clerk) in the Official Records³¹ may be redacted only until the protected party no longer resides at the dwelling³² or upon his or her death.³³

Each individual eligible for the records exemption may use it individually—including adult children who no longer live with their originally qualifying parent, or whose originally qualifying parent is no longer living.

Open Government Sunset Review of the Public Records Exemptions for Specified Agency Personnel

The staff of the Senate Governmental Oversight and Accountability Committee and the House Ethics, Elections, and Open Government Subcommittee surveyed multiple Florida agencies, property appraisers’ offices, clerks of circuit courts, law enforcement agencies, school districts, and state universities and colleges to ascertain whether the public records exemptions in s. 119.071(4)(d), F.S., remain necessary. Staff reviewed the agencies’ responses, and a majority of those agencies recommend that the Legislature reenact the public records exemptions without any changes. Many responses cited a continued concern for employee safety as the basis for the recommendation to reenact the public records exemption in s. 119.071(4)(d), F.S.

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ OPPAGA, *A Review of Home Address Redaction Processes and Real Property Interests*, Report No. 20-06, 6 (Dec. 2020), <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited Jan. 2, 2024).

³¹ Section 28.222(2), F.S.

³² The protected individual must submit a notarized, written request to release the removed information. Section 119.071(4)(d)8., F.S.

³³ A certified copy of a death certificate or court order must be presented with a notarized request to release the information to remove the exemption. Section 119.071(4)(d)9., F.S. Note, the Clerk is also called the “county recorder.” *See*, s. 28.222(2), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d), F.S., to continue the current public records exemptions for personal identifying information of specified agency personnel and their families.

Section 2 provides that the bill takes effect on October 1, 2024.

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, 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 continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

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. This bill continues a current public records exemption without expansion, and does not require a public necessity statement.

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 personal identifying information of public employees and their family whose position may subject them to close contact with individuals who may be a threat to them, and may subject them or their family members to harassment, threats, or other harms. 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 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.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.