

By Senator Thrasher

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1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       501.171, F.S.; providing exemptions from public  
4       records requirements for the notice of a data breach  
5       and information held by the Department of Legal  
6       Affairs pursuant to certain investigations;  
7       authorizing disclosure under certain circumstances;  
8       providing for future review and repeal of the  
9       exemption under the Open Government Sunset Review Act;  
10      providing a statement of public necessity; providing a  
11      contingent effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

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15       Section 1. Subsection (11) is added to section 501.171,  
16 Florida Statutes, as created by SB \_\_\_\_, 2014 Regular Session,  
17 to read:

18       501.171 Security of confidential personal information.—

19       (11) PUBLIC RECORDS EXEMPTION.—

20       (a) All information received by the department pursuant to  
21 notifications required by this section, or received pursuant to  
22 a subsequent investigation by the department or another federal  
23 or state law enforcement agency, is confidential and exempt from  
24 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, so  
25 long as the investigation is considered an active investigation.  
26 This exemption shall be construed in conformity with s.  
27 119.071(2)(c). However, during an active investigation, such  
28 information may be disclosed by the department in the  
29 furtherance of its official duties and responsibilities; for

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30 print, publication, or broadcast if the department determines  
31 that such release would assist in notifying the public or  
32 locating or identifying a person that the department believes to  
33 have been a victim of the breach; or to another governmental  
34 agency in the furtherance of its official duties and  
35 responsibilities.

36 (b) Notwithstanding subsection (a), the following  
37 information received by the department shall remain confidential  
38 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
39 Constitution after completion of an investigation:

40 1. All information to which another public records  
41 exemption applies.

42 2. Personal information as such term is defined in this  
43 section.

44 3. A computer forensic report.

45 4. Information that would otherwise reveal weaknesses in a  
46 covered entity's data security.

47 5. Information that would disclose a covered entity's trade  
48 secrets or proprietary information.

49 Section 2. The Legislature finds that it is a public  
50 necessity that information held by the Department of Legal  
51 Affairs pursuant to an investigation of a violation of s.  
52 501.171, Florida Statutes, relating to information security, be  
53 confidential and exempt from public records requirements for the  
54 following reasons:

55 (1) A data breach is likely the result of criminal activity  
56 that will likely lead to further criminal activity. Notices  
57 provided to the department and materials obtained during  
58 investigations of a violation of s. 501.171, Florida Statutes,

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59 are likely to contain proprietary information about the security  
60 of the breached system. The release of the proprietary  
61 information could result in the identification of  
62 vulnerabilities and further breaches of that system. This  
63 exemption protects the security of the breached systems, thus  
64 protecting the personal information of Floridians stored within  
65 the systems.

66 (2) Notices provided to the Department of Legal Affairs and  
67 materials obtained during investigations of a violation of s.  
68 501.171, Florida Statutes, may contain personal information that  
69 could be used for the purpose of identity theft or some other  
70 financial harm. The release of this information by the  
71 department in response to a public records request could be just  
72 as problematic as the breach or improper disposal of customer  
73 records. This exemption protects the security of the personal  
74 information by excluding it from public records requirements.

75 Section 3. This act shall take effect on the same date that  
76 SB \_\_\_ or similar legislation takes effect, if such legislation  
77 is adopted in the same legislative session or an extension  
78 thereof and becomes a law.