



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Governmental Oversight and Accountability
(Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 663.416, Florida Statutes, is created
and incorporated into part III of chapter 663, Florida Statutes,
as created by CS/SB 738, 2017 Regular Session, to read:

663.416 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Reports of examinations, operations, or condition"



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11 means records submitted to or prepared by the office as part of
12 the office's duties performed pursuant to s. 655.012 or s.
13 655.045.

14 (b) "Working papers" means the records of the procedure
15 followed, the tests performed, the information obtained, and the
16 conclusions reached in an investigation or examination performed
17 under s. 655.032 or s. 655.045. The term includes planning
18 documentation, work programs, analyses, memoranda, letters of
19 confirmation and representation, abstracts of the books and
20 records of a financial institution, as defined in s. 655.005,
21 and schedules or commentaries prepared or obtained in the course
22 of such investigation or examination.

23 (2) PUBLIC RECORDS EXEMPTION.—The following information
24 held by the office is confidential and exempt from s. 119.07(1)
25 and s. 24(a), Art. I of the State Constitution:

26 (a) Any personal identifying information of the customers
27 or prospective customers of an affiliated international trust
28 entity which appears in the books and records of an
29 international trust company representative office or in records
30 relating to reports of examinations, operations, or condition of
31 an international trust company representative office, including
32 working papers.

33 (b) Any portion of a list of names of the shareholders or
34 members of an affiliated international trust entity.

35 (c) Information received by the office from a person from
36 another state or country or the Federal Government which is
37 otherwise confidential or exempt pursuant to the laws of that
38 state or country or pursuant to federal law.

39 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT



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40 INFORMATION.—Information made confidential and exempt under
41 subsection (2) may be disclosed by the office:

42 (a) To the authorized representative or representatives of
43 the international trust company representative office under
44 examination. The authorized representative or representatives
45 must be identified in a resolution or by written consent of the
46 board of directors, or the equivalent, of the international
47 trust entity.

48 (b) To a fidelity insurance company, upon written consent
49 of the board of directors, or the equivalent, of the
50 international trust entity.

51 (c) To an independent auditor, upon written consent of the
52 board of directors, or the equivalent, of the international
53 trust entity.

54 (d) To the liquidator, receiver, or conservator for the
55 international trust entity, if a liquidator, receiver, or
56 conservator is appointed. However, any portion of the
57 information which discloses the identity of a customer or
58 prospective customer of the international trust entity, or a
59 shareholder or member of the international trust entity, must be
60 redacted by the office before releasing such portion to the
61 liquidator, receiver, or conservator.

62 (e) To a law enforcement agency in furtherance of the
63 agency's official duties and responsibilities.

64 (f) To the appropriate law enforcement or prosecutorial
65 agency for the purpose of reporting any suspected criminal
66 activity.

67 (g) Pursuant to a legislative subpoena. A legislative body
68 or committee that receives records or information pursuant to



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69 such a subpoena must maintain the confidential status of the
70 records or information, except in a case involving the
71 investigation of charges against a public official subject to
72 impeachment or removal, in which case the records or information
73 may be disclosed only to the extent necessary as determined by
74 such legislative body or committee.

75 (4) PUBLICATION OF INFORMATION.—This section does not
76 prevent or restrict the publication of a report required by
77 federal law.

78 (5) PENALTY.—A person who willfully, in violation of this
79 section, discloses information made confidential and exempt by
80 this section commits a felony of the third degree, punishable as
81 provided in s. 775.082, s. 775.083, or s. 775.084.

82 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
83 to the Open Government Sunset Review Act in accordance with s.
84 119.15 and is repealed on October 2, 2022, unless reviewed and
85 saved from repeal through reenactment by the Legislature.

86 Section 2. The Legislature finds that it is a public
87 necessity to make confidential and exempt from s. 119.07(1),
88 Florida Statutes, and s. 24(a), Article I of the State
89 Constitution personal identifying information of the customers
90 or prospective customers of an affiliated international trust
91 entity which appears in the books and records of an
92 international trust company representative office or in records
93 relating to reports of examinations, operations, or condition of
94 an international trust company representative office, including
95 working papers; any portion of a list of names of the
96 shareholders or members of an affiliated international trust
97 entity which is held by the office; and information received by



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98 the Office of Financial Regulation from a person from another
99 state or country or the Federal Government which is otherwise
100 confidential or exempt pursuant to the laws of that state or
101 country or pursuant to federal law.

102 (1) An exemption from public records requirements is
103 necessary for such records and information because the Office of
104 Financial Regulation may receive sensitive personal and
105 financial information, including personal identifying
106 information relating to such entities, in the course of its
107 investigation and examination duties. Public disclosure of the
108 personal identifying information of existing customers,
109 prospective customers, shareholders, or members of the
110 affiliated international trust entity could defame or jeopardize
111 the personal and financial safety of those individuals and their
112 family members. The individuals served by the affiliated
113 international trust entity are often individuals of high net
114 worth. Individuals of high net worth and shareholders or members
115 of financial institutions are frequently the targets of criminal
116 predators seeking access to their assets. It is important that
117 the exposure of such individuals and their family members to
118 threats of extortion, kidnapping, and other crimes not be
119 increased. Placing the personal identifying information of these
120 individuals within the public domain would increase the security
121 risk that those individuals or their families could become the
122 target of criminal activity.

123 (2) Public disclosure of information received by the Office
124 of Financial Regulation from a person from another state or
125 country or the Federal Government which is otherwise
126 confidential or exempt pursuant to the laws of that state or



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127 country or pursuant to federal law may deteriorate the office's
128 relationships with other regulatory bodies. The office
129 frequently engages in joint examinations with federal
130 regulators. If such information were subject to disclosure to
131 the public, not only would such disclosure deter other
132 regulatory bodies from communicating vital information to the
133 office, but the office would violate existing information-
134 sharing agreements governing the sharing of confidential
135 supervisory information.

136 Section 3. Section 663.540, Florida Statutes, is created
137 and incorporated into part IV of chapter 663, Florida Statutes,
138 as created by CS/SB 738, 2017 Regular Session, to read:

139 663.540 Public records exemption.-

140 (1) DEFINITIONS.-As used in this section, the term:

141 (a) "Reports of examinations, operations, or condition"
142 means records submitted to or prepared by the office as part of
143 the office's duties performed pursuant to s. 655.012 or s.
144 663.537.

145 (b) "Working papers" means the records of the procedure
146 followed, the tests performed, the information obtained, and the
147 conclusions reached in an investigation or examination performed
148 under s. 655.032 or s. 663.537. The term includes planning
149 documentation, work programs, analyses, memoranda, letters of
150 confirmation and representation, abstracts of the books and
151 records of a financial institution, as defined in s. 655.005,
152 and schedules or commentaries prepared or obtained in the course
153 of such investigation or examination.

154 (2) PUBLIC RECORDS EXEMPTION.-The following information
155 held by the office is confidential and exempt from s. 119.07(1)



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156 and s. 24(a), Art. I of the State Constitution:

157 (a) Any personal identifying information of the customers
158 or prospective customers of an affiliated international trust
159 entity which appears in the books and records of a limited
160 service affiliate or in records relating to reports of
161 examinations, operations, or condition of a limited service
162 affiliate, including working papers.

163 (b) Any portion of a list of names of the shareholders or
164 members of a limited service affiliate.

165 (c) Information received by the office from a person from
166 another state or country or the Federal Government which is
167 otherwise confidential or exempt pursuant to the laws of that
168 state or country or pursuant to federal law.

169 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
170 INFORMATION.—Information made confidential and exempt under
171 subsection (2) may be disclosed by the office:

172 (a) To the authorized representative or representatives of
173 the limited service affiliate under examination. The authorized
174 representative or representatives must be identified in a
175 resolution or by written consent of the board of directors, if
176 the limited service affiliate is a corporation, or of the
177 managers, if the limited service affiliate is a limited
178 liability company.

179 (b) To a fidelity insurance company, upon written consent
180 of the limited service affiliate's board of directors, if the
181 limited service affiliate is a corporation, or of the managers,
182 if the limited service affiliate is a limited liability company.

183 (c) To an independent auditor, upon written consent of the
184 limited service affiliate's board of directors, if the limited



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185 service affiliate is a corporation, or of the managers, if the
186 limited service affiliate is a limited liability company.

187 (d) To the liquidator, receiver, or conservator for a
188 limited service affiliate, if a liquidator, receiver, or
189 conservator is appointed. However, any portion of the
190 information which discloses the identity of a customer of the
191 affiliated international trust entity, or a shareholder or
192 member of the limited service affiliate, must be redacted by the
193 office before releasing such portion to the liquidator,
194 receiver, or conservator.

195 (e) To a law enforcement agency in furtherance of the
196 agency's official duties and responsibilities.

197 (f) To the appropriate law enforcement or prosecutorial
198 agency for the purpose of reporting any suspected criminal
199 activity.

200 (g) Pursuant to a legislative subpoena. A legislative body
201 or committee that receives records or information pursuant to
202 such a subpoena must maintain the confidential status of the
203 records or information, except in a case involving the
204 investigation of charges against a public official subject to
205 impeachment or removal, in which case the records or information
206 may be disclosed only to the extent necessary as determined by
207 such legislative body or committee.

208 (4) PUBLICATION OF INFORMATION.—This section does not
209 prevent or restrict the publication of a report required by
210 federal law.

211 (5) PENALTY.—A person who willfully, in violation of this
212 section, discloses information made confidential and exempt by
213 this section commits a felony of the third degree, punishable as



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214 provided in s. 775.082, s. 775.083, or s. 775.084.

215 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
216 to the Open Government Sunset Review Act in accordance with s.
217 119.15 and is repealed on October 2, 2022, unless reviewed and
218 saved from repeal through reenactment by the Legislature.

219 Section 4. The Legislature finds that it is a public
220 necessity to make confidential and exempt from s. 119.07(1),
221 Florida Statutes, and s. 24(a), Article I of the State
222 Constitution personal identifying information of the customers
223 or prospective customers of an affiliated international trust
224 entity which appears in the books and records of a limited
225 service affiliate or in records relating to reports of
226 examinations, operations, or condition of a limited service
227 affiliate, including working papers; any portion of a list of
228 names of the shareholders or members of a limited service
229 affiliate which is held by the office; and information received
230 by the office from a person from another state or country or the
231 Federal Government which is otherwise confidential or exempt
232 pursuant to the laws of that state or country or pursuant to
233 federal law.

234 (1) An exemption from public records requirements is
235 necessary for personal identifying information of existing and
236 prospective customers of an affiliated international trust
237 entity or shareholders or members of a limited service
238 affiliate, because if such information is available for public
239 access, such access could defame or jeopardize the personal and
240 financial safety of those individuals. The individuals served by
241 the affiliated international trust entity are often individuals
242 of high net worth. Individuals of high net worth and



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243 shareholders or members of financial institutions are frequently
244 the targets of criminal predators seeking access to their
245 assets. It is important that the exposure of such individuals
246 and their family members to threats of extortion, kidnapping,
247 and other crimes not be increased. Placing the personal
248 identifying information of these individuals within the public
249 domain would increase the security risk that those individuals
250 or their families could become the target of criminal activity.

251 (2) An exemption from public records requirements is
252 necessary for information received by the Office of Financial
253 Regulation from a person from another state or country or the
254 Federal Government which is otherwise confidential or exempt
255 pursuant to the laws of that state or country or pursuant to
256 federal law, as public disclosure may deteriorate the office's
257 relationships with other regulatory bodies. The office
258 frequently engages in joint examinations with federal
259 regulators. If such information were subject to disclosure to
260 the public, not only would this disclosure deter other
261 regulatory bodies from communicating vital information to the
262 office, but the office would violate existing information-
263 sharing agreements governing the sharing of confidential
264 supervisory information.

265 Section 5. Subsections (1), (2), (5), and (9) of section
266 655.057, Florida Statutes, are amended, and subsection (15) is
267 added to that section, to read:

268 655.057 Records; limited restrictions upon public access.—

269 (1) Except as otherwise provided in this section and except
270 for such portions thereof which are otherwise public record, all
271 records and information relating to an investigation by the



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272 office are confidential and exempt from s. 119.07(1) and s.
273 24(a), Art. I of the State Constitution until such investigation
274 is completed or ceases to be active. For purposes of this
275 subsection, an investigation is considered "active" while such
276 investigation is being conducted by the office with a
277 reasonable, good faith belief that it may lead to the filing of
278 administrative, civil, or criminal proceedings. An investigation
279 does not cease to be active if the office is proceeding with
280 reasonable dispatch, and there is a good faith belief that
281 action may be initiated by the office or other administrative or
282 law enforcement agency. After an investigation is completed or
283 ceases to be active, portions of the records relating to the
284 investigation are confidential and exempt from s. 119.07(1) and
285 s. 24(a), Art. I of the State Constitution to the extent that
286 disclosure would:

287 (a) Jeopardize the integrity of another active
288 investigation;

289 (b) Impair the safety and soundness of the financial
290 institution;

291 (c) Reveal personal financial information;

292 (d) Reveal the identity of a confidential source;

293 (e) Defame or cause unwarranted damage to the good name or
294 reputation of an individual or jeopardize the safety of an
295 individual; or

296 (f) Reveal investigative techniques or procedures.

297 (2) Except as otherwise provided in this section and except
298 for such portions thereof which are public record, reports of
299 examinations, operations, or condition, including working
300 papers, or portions thereof, prepared by, or for the use of, the



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301 office or any state or federal agency responsible for the
302 regulation or supervision of financial institutions in this
303 state are confidential and exempt from s. 119.07(1) and s.
304 24(a), Art. I of the State Constitution. However, such reports
305 or papers or portions thereof may be released to:

306 (a) The financial institution under examination;

307 (b) Any holding company of which the financial institution
308 is a subsidiary;

309 (c) Proposed purchasers if necessary to protect the
310 continued financial viability of the financial institution, upon
311 prior approval by the board of directors of such institution;

312 (d) Persons proposing in good faith to acquire a
313 controlling interest in or to merge with the financial
314 institution, upon prior approval by the board of directors of
315 such financial institution;

316 (e) Any officer, director, committee member, employee,
317 attorney, auditor, or independent auditor officially connected
318 with the financial institution, holding company, proposed
319 purchaser, or person seeking to acquire a controlling interest
320 in or merge with the financial institution; or

321 (f) A fidelity insurance company, upon approval of the
322 financial institution's board of directors. However, a fidelity
323 insurance company may receive only that portion of an
324 examination report relating to a claim or investigation being
325 conducted by such fidelity insurance company.

326 (g) Examination, operation, or condition reports of a
327 financial institution shall be released by the office within 1
328 year after the appointment of a liquidator, receiver, or
329 conservator to the financial institution. However, any portion



330 of such reports which discloses the identities of depositors,
331 bondholders, members, borrowers, or stockholders, other than
332 directors, officers, or controlling stockholders of the
333 institution, shall remain confidential and exempt from s.
334 119.07(1) and s. 24(a), Art. I of the State Constitution.

335
336 Any confidential information or records obtained from the office
337 pursuant to this paragraph shall be maintained as confidential
338 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
339 Constitution.

340 (5) This section does not prevent or restrict:

341 (a) Publishing reports that are required to be submitted to
342 the office pursuant to s. 655.045(2) or required by applicable
343 federal statutes or regulations to be published.

344 (b) Furnishing records or information to any other state,
345 federal, or foreign agency responsible for the regulation or
346 supervision of financial institutions.

347 (c) Disclosing or publishing summaries of the condition of
348 financial institutions and general economic and similar
349 statistics and data, provided that the identity of a particular
350 financial institution is not disclosed.

351 (d) Reporting any suspected criminal activity, with
352 supporting documents and information, to appropriate law
353 enforcement and prosecutorial agencies.

354 (e) Furnishing information upon request to the Chief
355 Financial Officer or the Division of Treasury of the Department
356 of Financial Services regarding the financial condition of any
357 financial institution that is, or has applied to be, designated
358 as a qualified public depository pursuant to chapter 280.



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359 (f) Furnishing information to Federal Home Loan Banks
360 regarding its member institutions pursuant to an information
361 sharing agreement between the Federal Home Loan Banks and the
362 office.

363

364 Any confidential information or records obtained from the office
365 pursuant to this subsection shall be maintained as confidential
366 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
367 Constitution.

368 (9) Materials supplied to the office or to employees of any
369 financial institution by other state or federal governmental
370 agencies remain the property of the submitting agency or the
371 corporation, and any document request must be made to the
372 appropriate agency. Any confidential documents supplied to the
373 office or to employees of any financial institution by other
374 state or federal governmental agencies are confidential and
375 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
376 Constitution. Such information shall be made public only with
377 the consent of such agency or the corporation.

378 (15) Subsections (1), (2), (5), and (9) are subject to the
379 Open Government Sunset Review Act in accordance with s. 119.15
380 and are repealed on October 2, 2022, unless reviewed and saved
381 from repeal through reenactment by the Legislature.

382 Section 6. The Legislature finds that it is a public
383 necessity to make confidential and exempt from s. 119.07(1),
384 Florida Statutes, and s. 24(a), Article I of the State
385 Constitution records and information relating to an
386 investigation by the Office of Financial Regulation; portions of
387 records relating to a completed or inactive investigation by the



388 office which would jeopardize the integrity of another active
389 investigation, impair the safety and soundness of the financial
390 institution, reveal personal financial information, reveal the
391 identity of a confidential source, defame or cause unwarranted
392 damage to the good name or reputation of an individual or
393 jeopardize the safety of an individual, or reveal investigative
394 techniques or procedures; reports of examinations, operations,
395 or condition, including working papers, or portions thereof,
396 prepared by, or for the use of, the office or any state or
397 federal agency responsible for the regulation or supervision of
398 financial institutions in this state; any portion of such
399 reports which discloses the identities of depositors,
400 bondholders, members, borrowers, or stockholders, other than
401 directors, officers, or controlling stockholders of the
402 institution; and materials supplied to the office or to
403 employees of any financial institution by other state or federal
404 governmental agencies.

405 (1) The terms "international trust entity" and "limited
406 service affiliate" referenced in newly created parts III and IV
407 of chapter 663, Florida Statutes, are added to the definition of
408 the term "financial institution" in s. 655.005(1)(i), Florida
409 Statutes, in CS/SB 738. The international trust company
410 representative offices and limited service affiliates servicing
411 international trust entities are thus subject to examination by
412 the Office of Financial Regulation. As a result, the office may
413 receive sensitive personal and financial information relating to
414 such entities in conjunction with its duties under chapters 655
415 and 663, Florida Statutes. An exemption from public records
416 requirements prevents gaps in the law by providing the same



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417 protections to international trust entities and limited service
418 affiliates which are afforded to other financial institutions,
419 thereby preventing any disadvantage to these similarly regulated
420 entities in comparison to other entities currently defined as
421 "financial institutions." An exemption from public records
422 requirements for reports of examinations, operations, or
423 condition, including working papers, is necessary to ensure the
424 office's ability to effectively and efficiently administer its
425 examination and investigation duties. Examination and
426 investigation are essential components of financial institutions
427 regulation. They deter fraud and ensure the safety and soundness
428 of the financial system. Examinations also provide a means of
429 early detection of violations, allowing for corrective action to
430 be taken before any harm can be done.

431 (2) The Legislature finds that it is a public necessity
432 that information and records relating to an examination or
433 investigation by the office be held confidential and exempt from
434 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
435 State Constitution. Public disclosure of records and information
436 relating to an examination or investigation by the office could
437 expose the subject financial institution to unwarranted damage
438 to its good name or reputation and impair its safety and
439 soundness, as well as the safety and soundness of the financial
440 system in the state. Public disclosure of records and
441 information relating to an investigation by the office which
442 could jeopardize the integrity of another active investigation
443 or reveal investigative techniques or procedures of the office
444 would impair the office's ability to effectively and efficiently
445 administer its duties under ss. 655.032 and 655.045, Florida



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446 Statutes. Any portion of a record or information relating to an
447 investigation or examination which reveals personal financial
448 information or the identity of a confidential source may defame,
449 or cause unwarranted damage to the good name or reputation of,
450 those individuals, or jeopardize their safety.

451 Section 7. This act shall take effect on the same date that
452 CS/SB 738 or similar legislation takes effect, if such
453 legislation is adopted in the same legislative session or an
454 extension thereof and becomes a law.

455
456 ===== T I T L E A M E N D M E N T =====

457 And the title is amended as follows:

458 Delete everything before the enacting clause
459 and insert:

460 A bill to be entitled
461 An act relating to public records; creating ss.
462 663.416 and 663.540, F.S.; defining terms; providing
463 exemptions from public records requirements for
464 certain information held by the Office of Financial
465 Regulation relating to international trust company
466 representative offices or limited service affiliates,
467 respectively, and relating to affiliated international
468 trust entities; authorizing the disclosure of the
469 information by the office to specified persons;
470 providing construction; providing criminal penalties;
471 providing future legislative review and repeal of the
472 exemptions; providing statements of public necessity;
473 amending s. 655.057, F.S.; providing that certain
474 exemptions from public records requirements for



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475 information relating to investigations, reports of
476 examinations, operations, or condition, including
477 working papers, and certain materials supplied by
478 governmental agencies are exempt from s. 24(a) of
479 Article I of the State Constitution, as a result of
480 the expansion of such exemptions to include the
481 records of international trust entities and limited
482 service affiliates, as made by CS/SB 738, 2017 Regular
483 Session; providing a statement of public necessity;
484 providing a contingent effective date.