

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 548

INTRODUCER: Senator Collins

SUBJECT: Public Records/Military Personnel and their Spouses and Dependents

DATE: January 8, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Brown</u> | <u>Proctor</u> | <u>MS</u> | Favorable |
| 2. | _____ | _____ | <u>GO</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 548 creates a public records exemption for personal identifying contact and location information held by an agency about current and former military personnel and their families.

Military personnel are current or former:

- Persons employed by the United States Department of Defense (DoD) for whom the federal government grants access to “secret” or “top secret” information; or
- Servicemembers of a special operations force.

Identification and location information included in the exemption are the:

- Home address, telephone numbers, and date of birth of a person who is military personnel;
- Home address, telephone numbers, date of birth, and name and location of a school of a spouse or dependent of the servicemember; and
- Name and location of a day care facility attended by the dependents of the servicemember.

To receive the exemption, a person must submit to the agency a written request and include a statement that the applicant has made reasonable efforts to protect the information from being otherwise publicly accessible.

The bill provides as justification for the exemption that disclosure of the information could otherwise compromise personal safety and security.

The exemption is subject to an Open Government Sunset Review and stands repealed on October 2, 2029, unless the Legislature reenacts and saves the exemption from repeal by that date.

The bill takes effect upon becoming law, and the exemption applies both prospectively and retroactively.

II. Present Situation:

Public Records Exemptions

Access to Public Records - Generally

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 The right to inspect or copy 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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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 See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any 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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

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 Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

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. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

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.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Sections 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.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Special Operations Forces

Special Operations Forces (SOF) are those active and reserve component forces of the armed services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations. The U.S. Special Operations Command (USSOCOM),

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?
- 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

headquartered at MacDill Air Force Base in Tampa, Florida, is a functional combatant command responsible for training, doctrine, and equipping for SOF units.²⁷

Specifically, SOF includes:

- Servicemembers of both the U.S. Army Special Forces and the Army 75th Ranger Regiment;
- U.S. Navy SEALs and Special Warfare Combatant-Craft Crewmen;
- U.S. Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists;
- U.S. Marine Corps Critical Skills Operators; and
- Any other component of the U.S. Special Operations Command approved by the Criminal Justice Standards and Training Commission.²⁸

As of 2020, USSOCOM out of MacDill Air Force Base consisted of over 70,000 active duty, reserve, National Guard, and civilian personnel assigned to its headquarters (about 2,500 personnel), its four components, and sub-unified commands.²⁹

History of Public Records Exemption on Identifying and Location Information of a Servicemember

Federal Bureau of Investigation Joint Intelligence Bulletin

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).³⁰ In it, the FBI and DHS warn of potential attacks on current and former servicemembers by supporters of the Islamic State of Iraq and the Levant (ISIL) who are in Western countries.³¹ In support, the Joint Bulletin references a document posted on September 16, 2014, by an ISIL supporter to an ISIL-dominated online forum. The document contained a list by name of potential targets for violence, including military officials.³²

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.³³

Public Records Exemption on Identifying and Location Information of Servicemember

The 2015 Legislature enacted a public records exemption for contact and location information of a servicemember and his or her family.³⁴ The public record exemption protected from disclosure

²⁷ Congressional Research Service, *U.S. Special Operations Forces (SOF): Background and Issues for Congress* (May 11, 2022), available at <https://crsreports.congress.gov/product/pdf/RS/RS21048/71> (last visited December 15, 2023).

²⁸ Section 943.10(5) and (22).

²⁹ United States Special Operations Command, *Fact Book 2022*, p. 6 (2022), available at <https://www.socom.mil/FactBook/2022%20Fact%20Book.pdf> (last visited December 15, 2023).

³⁰ Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Chapter 2015-86, Laws of Fla.

identification and location information of current or former active duty servicemembers who served after September 11, 2001 in:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

Information protected by the exemption was the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The bill required the servicemember to request the exemption in writing and include a statement that the servicemember made reasonable efforts to protect the information from public access.

The original public necessity statement articulated as justification for the exemption that without the exemption the safety of servicemembers, spouses, and dependents was jeopardized. The public necessity statement made specific reference to a terrorist group allegedly gathering and publishing from public sources photographs and home addresses of servicemembers to target them for terrorist acts.³⁵

The bill creating the exemption included a repeal date of October 2, 2020, unless the Legislature saved the exemption from repeal by that date.

Open Government Sunset Review

The Legislature conducted an Open Government Sunset Review of the public records exemption in 2020.³⁶ The bill did not pass. Therefore, the exemption was repealed.

Subsequent Threats to Servicemembers

The FBI provided a letter³⁷ to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that Ardit Ferizi culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a list that contained the personal identifying information of the individuals. Further, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to ISIL, and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel.

³⁵ *Id.*

³⁶ CS/CS/SB 7010 (2020).

³⁷ FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

In 2023, the FBI provided a subsequent update to the Joint Intelligence Bulletin of 2014. In response to a query on present continuing threats to servicemembers, the FBI responded, “We have no known additional information that we can provide at this time pertaining to threats of service members and/or their families.”³⁸

III. Effect of Proposed Changes:

SB 548 creates a public records exemption for personal identifying contact and location information held by an agency about current and former military personnel and their families.

Military personnel are current or former:

- Persons employed by the DoD for whom the federal government grants access to “secret” or “top secret” information; or
- Servicemembers of a special operations force.

Identification and location information included in the exemption are the:

- Home address, telephone numbers, and date of birth of a person who is military personnel;
- Home address, telephone numbers, date of birth, and name and location of a school of a spouse or dependent of the servicemember; and
- Name and location of a day care facility attended by the dependents of the servicemember.

As the public records exemption makes the information exempt from disclosure, rather than confidential and exempt, records may be publicly released at the discretion of the records custodian.

To receive the exemption, a person must submit to the agency a written request to exempt from disclosure the identification and location information, including a statement that the applicant has made reasonable efforts to protect the information from being publicly accessible through other available means.

The bill includes in its public necessity statement as justification for the exemption that disclosure of the information could otherwise compromise personal safety and security. In particular, the public necessity statement notes that terrorist groups have threatened military personnel and their families, including one terrorist group that allegedly published a list of photographs and home addresses of military personnel gathered from public sources.

The exemption is subject to an Open Government Sunset Review and stands repealed on October 2, 2029, unless the Legislature reenacts and saves the exemption from repeal by that date.

The exemption applies both prospectively and retroactively.

The bill takes effect upon becoming law.

³⁸ Email from Coult Markovsky, Federal Bureau of Investigation (Feb. 21, 2023) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

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

None.

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 enacts a new exemption for personal identification and contact information of current or former military personnel, their spouse, and dependents; thus, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the bill contains a statement of public necessity and provides specific justification for the exemption.

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 and contact information of only those current or former military personnel with high security clearance and servicemembers of a special operations force, and their families, contained in a record held by government agencies from use by terrorist groups. 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:

None.

C. Government Sector Impact:

The public records exemption applies prospectively and retroactively. An agency that maintains the information that is the subject of the public records exemption will incur costs to redact the information. Fiscal impact is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not specify what legal documentation is required to prove eligible security clearance or membership in a special operations force.³⁹

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.

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

³⁹ Dep't of Veteran's Affairs, *2024 Agency Legislative Bill Analysis, SB 548*, pg. 5 (Dec. 18, 2023) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).