The Florida Senate

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Committee on Commerce and Consumer Services Senator James E. "Jim" King, Jr., Chair

OPEN GOVERNMENT SUNSET REVIEW OF SS. 414.106, 414.295 AND 445.007(9)[1], F.S., TEMPORARY CASH ASSISTANCE RECORDS EXEMPTIONS

SUMMARY

Chapter 2001-160, L.O.F., created three sections of the Florida Statutes (ss. 414.106, 414.295 and 445.007(9), F.S.), to exempt meetings and records relating to recipients of temporary cash assistance (TCA) from the requirements of the Public Records Law (s. 119.07, F.S.), the Public Meetings Law (s. 286.011, F.S.) and from s. 24, Art. I of the State Constitution. These public records and meetings exemptions are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will be repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

As required by the Open Government Sunset Review Act, this report reviews those statutory provisions using the criteria prescribed in the act, and finds that the records of TCA recipients contain sensitive personal information that should continue to be safeguarded. Moreover, the exemption of these meetings from public disclosure is necessary for the efficient administration of the state entities involved.

Consequently, this report recommends that the Legislature maintain the public meetings exemption in ss. 414.106, F.S., and 445.007(9), F.S., as written.

Furthermore, this report recommends that the Legislature revise the public records exemption in s. 414.295, F.S., to remove the reference to the Department of Management Services, as it is unnecessary, and add a reference to school districts, which may also possess exempted information.

BACKGROUND

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

> Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

[1] Formerly s. 445.007(12), F.S. (as revised by Section 5, ch. 2005-255, L.O.F.).

The Public Records Law[2] specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> 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.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge…."[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995[4] establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An "exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption."[5]

Section 119.15(6)(a), F.S.,[6] requires, as part of the review process, the consideration of the following questions:

- 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?

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- The exemption "[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption."
- The exemption "[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals."
- The exemption "[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace."[7]

Temporary Cash Assistance

The federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to foster a movement toward greater self-sufficiency among welfare recipients. The act

[2] Chapter 119, F.S.
[3] *Shevin v. Byron, Hairless, Schaffer, Reid & Assocs., Inc.,* 379 So. 2d 633, 640 (Fla. 1980).
[4] Section 119.15, F.S.
[5] Section 119.15(3)(b), F.S.
[6] Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).
[7] Section 119.15(6)(b), F.S.

required welfare recipients to begin working two years after beginning assistance; provided funding to states to establish and maintain work transition programs; increased funding for child care and medical coverage to foster the welfare to work transition; and granted states increased flexibility in managing their welfare programs. The federal act ended entitlement to welfare assistance for eligible families (Aid to Families with Dependent Children) and replaced it with Temporary Assistance to Needy Families (TANF). To qualify for TANF block grants, states must impose work requirements on welfare recipients and establish time limits on the receipt of TANF cash assistance, also known as temporary cash assistance.

In response to the passage of the federal legislation, the Florida Legislature created the Work and Gain Economic Self-sufficiency (WAGES) program in 1996 to develop opportunities for public assistance recipients that would remove barriers to employment and end reliance on government assistance.

In 2000, the Florida Legislature enacted the Workforce Innovation Act, which replaced the WAGES Program with a new Welfare Transition Program that stream-lined welfare delivery in the state. The new program forms part of the state's broader workforce development system and includes administration of the temporary cash assistance program.

The federal TANF program provides funding for "a wide variety of employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job and improve their economic circumstances."[8] More specifically, the TANF program is designed to do the following:

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.[9]

The federal TANF law expressly includes cash payments as one form of assistance to families. More specifically, 45 CFR Section 260.31(a)(1) states:

> The term 'assistance' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

The Temporary Cash Assistance (TCA) program provides cash assistance to families with children under the age of 18 (or under age 19, if full–time secondary school students), that meet the technical, income and asset requirements. Such cash assistance does not include short term non-recurrent benefits to meet a crisis situation or support services that are provided to the employed.

Federal law, 42 U.S.C. Section 602(a)(1)(iv), requires that the states

> [t]ake such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

Federal Code, 45 CFR Section 205.50(1) requires that state plans for financial assistance provide, *by state statute*, safeguards for personally identifying information of applicants and recipients and other information further detailed in the federal regulation.[10]

Chapter 414, F.S., which outlines Florida's family self-sufficiency measures and ch. 445, F.S., which outlines the related workforce requirements, incorporate the federal directives. Section 414.106, F.S., and s. 445.007(9), F.S., implement the required public meeting exemptions, and s. 414.295, F.S., provides for the required public records exemption.

METHODOLOGY

[8] Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance. *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families through the TANF Program,* p.4. http://www.acf.dhhs.gov/programs/ofa/funds2.htm. 31 August 2005.

[9] 45 CFR Section 260.20.

[10] *See also,* Staff Analysis to HB 1385 (2001).

Committee staff surveyed the agencies to which the exemptions extended including: the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Children and Families, the Department of Education, the Department of Health, the Department of Management Services, and the Department of Revenue. All twenty-four regional workforce boards were also surveyed. In addition, committee staff interviewed survey respondents where necessary to clarify responses and to gather additional information.

FINDINGS

Sunset Review Questions

The Open Government Sunset Review Act prescribes certain questions to be considered by the Legislature when determining whether to save a public records exemption from repeal.

What specific records do the exemptions affect?

Section 414.106, F.S., exempts any meeting or portion of a meeting held by the

- Department of Children and Families (DCF),
- Workforce Florida, Inc., (WFI),
- regional workforce boards or
- local committees created by regional workforce boards as authorized by s. 445.007(6), F.S.

The exemption is applicable where personal identifying information contained in records related to TCA recipients is discussed, if the information identifies a participant, a participant's family, or a participant's family or household member.

Similarly, s. 445.007(9), F.S., exempts from the requirements of the Public Meetings Law any meeting or portion of a meeting held by WFI or a regional workforce board or local committee where personal identifying information contained in TCA-related records is discussed.

Section 414.295, F.S., specifically declares all personally identifying information contained in records relating to TCA that would identify a TCA participant, the participants' family, or a participant's family or household member confidential and exempt from the Public Records Law when held by:

- DCF;
- the Agency for Workforce Innovation (AWI);
- WFI;
- the Department of Management Services (DMS);
- the Department of Health (DOH);
- the Department of Revenue (DOR);
- the Department of Education (DOE);
- a regional workforce board; or
- a local committee created by a regional workforce board.

This statutory provision also permits the release of TCA-related records under limited circumstances.

Survey responses indicate that, in regard to all three exemptions, personal identifying information includes, but is not limited to, names, social security numbers, home and mailing addresses, demographic descriptions, employment addresses, school addresses and telephone numbers. According to DCF, this information is typically contained in paper and electronic public assistance case files. The electronic files are stored in the FLORIDA System.[11] The meetings at which such information and files may be discussed include public assistance eligibility interviews, administrative or appeal hearings, interagency meetings regarding client service needs and reviews and hearings related to public assistance fraud. Regional workforce boards indicate that such records may also be discussed at grievance proceedings.

AWI and regional workforce boards indicate that personnel at One-Stop Career Centers, the local entity that directly interfaces with clients, routinely collect such information from applicants and aid recipients. Regional workforce boards report that such information is kept in paper or electronic files depending on the particular system in place at each regional workforce board.

Both AWI and DOR report that they can access information regarding TCA recipients through the FLORIDA System. More specifically, DOR reports that the populations served by DCF and the DOR Child Support Enforcement Program often overlap. Although DOR may rely on s. 409.2579, F.S., which declares information concerning applicants and recipients of Title IV-D child support services

[11] The FLORIDA (Florida On-line Recipient Integrated Data Access) System is an information system used to track client eligibility and payments.

confidential and exempt from public disclosure generally, it also relies on the protection of s. 414.295, F.S., when it accesses DCF records.

WFI indicates that it does not hold any TCA-recipient records. However, discussions with AWI and WFI reveal that a 2005 revision to s. 445.004(4)(g), F.S., which would allow WFI to create a dispute resolution process to address disputes between regional workforce boards, and AWI may require WFI to access the information protected by s. 414.295, F.S., in certain cases.

DMS reports that it possesses no records impacted by any of the statutes under review. It further indicates it should be removed as a covered agency under this statute.

DOE reports it does not directly receive personally identifying records related to TCA recipients. However, school districts receive such information as part of the Learnfare program under s. 414.1251, F.S., which requires DCF to reduce TCA benefits for a student who is habitually truant. Under this program, DCF and local school districts share attendance and truancy information. Although such student records are protected under ch. 1002, F.S., that protection does not extend to the records of home-schooled or private school students who may also be TCA recipients. Therefore, school districts should be added to the list of covered agencies under s. 414.295, F.S., in order to protect all student records shared between DCF and DOE.

DOH indicates it does not possess TCA records. However, portions of the DOH website indicate that clients applying for such programs as the Women, Infants & Children (WIC) program must show they are income eligible by submitting a TCA eligibility letter or similar financial information. To the extent that DOH receives such records, the agency suggests such information would be protected from public disclosure under s. 119.021(6)(cc), F.S. That statute states, in pertinent part:

> All personal identifying information; bank account numbers; and debit, charge and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services made or received by the Department of Health or its service providers are confidential and exempt from the provision of subsection (1) and s. 24(a), Art. I of the State Constitution.

According to DOH, ch. 119, F.S., provides sufficient protection of any records DOH may receive regarding TCA recipients. However, to the extent that DOH receives or shares this information with other agencies, it should remain a covered agency in s. 414.295, F.S.

Whom do the exemptions uniquely affect?

The public records exemptions under review uniquely affect recipients of TCA, their family and household members, the agencies and related entities providing such assistance which have access to information regarding such recipients.

What is the public purpose or goal of the exemptions?

In 2001, the Legislature, when enacting the public records exemptions under review, found that the exemptions were

> [A] public necessity because the state has a compelling interest to ensure that the participants and their families or family and household members for whom the exemptions are created fully participate in welfare transition programs in order to assist them in attaining self-sufficiency, including programs to deal with problems such as illiteracy, substance abuse, and mental health.[12]

The Legislature recognized that the fear of public disclosure would be as a "significant disincentive" for full participation in the new welfare transition programs. Moreover, the legislation expressly states that the state has a compelling interest to:

- ensure that in meetings concerning assistance cases, the parties present are able to fully consider pertinent facts related to potential recipients' eligibility;
- protect recipients and their family or household members from the type of trauma that may result from public disclosure of their financial situations; and
- protect participants who may be victims of domestic violence.

The survey responses support these concerns. Several responses point out that the federal TANF law requires

[12] Section 4, ch. 2001-160, L.O.F.

states to provide confidentiality safeguards for client records. Failure to do so could place Florida TANF funding at risk. The survey responses concur that release of such information would threaten the protection and safety of individuals and families while hampering the ability of state entities to deliver services to clients.

Survey responses also indicate that interagency functions would be adversely affected if the state entities charged with assisting TCA recipients could not share information as needed to properly serve those clients.

Is the information otherwise readily obtainable?

The records of TCA recipients are primarily compiled by DCF and regional workforce boards for the purpose of administering TANF programs. The records are typically held by these state entities, but shared with other state agencies as necessary to provide services to TCA recipients. Information contained in the records does not appear to be readily available to the general public from other sources.

Survey responses confirm that the information collected from TCA recipients is kept confidential unless requested in accordance with statutory exceptions. Section 414.295, F.S., the public records exemption, specifies several circumstances under which such records may be released, including:

a) The administration of the TANF plan within and among DCF, AWI, WFI, DMS, DOH, DOR, DOE regional workforce boards or local committees created by the regional workforce boards or service providers under contract with any of these entities;
b) The administration of the state's plan or program under several additional titles of the Social Security Act as amended;
c) Any investigation, prosecution, or any criminal, civil or administrative proceeding conducted in connection with the administration of this program;
d) The administration of any other state, federal or federally assisted program that provides assistance or services on the basis of need, in cash or in kind, directly to a participant;
e) Any audit or similar activity involving the review of financial documents;
f) The administration of the unemployment compensation program;
g) The reporting to the appropriate agency of known or suspect abuse, exploitation, negligence or maltreatment of a child or elderly person receiving assistance; and
h) Where the records have been subpoenaed.

Although the survey responses indicate that records have been released under one or more of these circumstances, those instances appear to be limited and have usually occurred as the result of a court order or subpoena.

Is the record or meeting protected by another exemption?

The public meeting exemption in s. 414.106, F.S., applies to meetings held by DCF, WFI, or a regional workforce board or local committee. Section 445.007(9), F.S., is substantially similar to s. 414.106, F.S., except it does not include DCF as one of the agencies to which it is applicable. It appears that DCF may have been omitted from s. 445.007(9), F.S., because ch. 445, F.S., solely addresses workforce development issues and the entities that develop and implement workforce policies.

The survey responses did not indicate that any of the subject provisions were duplicative.

Section 414.295, F.S., does not appear to be duplicated elsewhere in the Florida Statutes.

Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Again, ss. 414.106 and 445.007(9), F.S., are substantially similar. However, the former statute references DCF as one of the affected agencies while the latter does not. Importantly, the exemptions are in two separate statutory chapters addressing different state agencies, DCF and AWI, a distinction which may warrant the maintenance of both exemptions. Removing either may lead to the inadvertent release of confidential information.

Section 414.295, F.S., is not duplicated elsewhere in statute.

The survey responses did not indicate that any of the statutes being reviewed should be merged.

Maintenance of ss. 414.106 and 445.007(9), F.S.

The Open Government Sunset Review Act specifies that a public records or meeting exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. In addition, to maintain an exemption, the Legislature must find that the exemptions' public purpose is "sufficiently compelling to override the [state's] strong public policy of open government and cannot be accomplished without the exemption." An exemptions' public purpose is sufficient, if:

- The exemption is necessary for the effective and efficient administration of a governmental program;
- The exempted record is of a sensitive, personal nature concerning individuals; or
- The exemption affects confidential information concerning an entity.[13]

Only one of these criteria must be met in order to maintain the exemption.

As noted above, the public meetings exemptions in s. 414.106 and 445.007(9), F.S., fulfill at least two of the aforementioned requirements for maintenance of the exemption. The exemptions protect sensitive personal information. Moreover, the exemptions are necessary for the efficient administration of the state entities involved.

Revising the Exemption in s. 414.295, F.S.

Section 414.295, F.S., impacts several state agencies including DCF, AWI, WFI, DMS, DOH, DOE, and regional workforce boards and their local committees.

DCF, AWI and the regional workforce boards all state they collect and maintain records of TCA recipients. Importantly, each agency relies heavily on the public records exemption. Therefore, each entity should continue to be included in s. 414.295, F.S.

Although WFI indicates it does not possess such records, the authority to create a dispute resolution process granted to WFI during the 2005 legislative session[14] may change that agency's need to access TCA records. That statutory change may require WFI to obtain TCA records when it intervenes in disputes between regional workforce boards and AWI. Therefore, WFI should continue to be covered by the exemption in s. 414.295, F.S.

DMS indicates it maintains no TCA-recipient records. Therefore, the reference to DMS may be removed from the statute.

DOE indicates, in its survey and subsequent discussions, that it does not possess records related to TCA recipients. However, given the necessity to compile student information on the state level, it seems likely that DOE would possess such information at various times. Therefore, DOE should remain a covered entity. Moreover, school districts should be added to this statute since they do receive confidential and exempt TCA records from DCF, some of which may not be adequately protected by the records exemptions in chs. 1002 and 411, F.S.

To the extent DOH receives TCA-recipient records, it indicates such records are adequately protected by s. 119.021(6)(cc), F.S., which protects all personal identifying information in records produced by or received by DOH. However, this provision does not explicitly protect information that DOH may give to other agencies. Therefore, the reference to DOH in s. 414.295, F.S., should be retained.

RECOMMENDATIONS

Committee staff recommends that the Legislature maintain the public meetings exemption in ss. 414.106, F.S., and 445.007(9), F.S. as written.

Committee staff further recommends that the Legislature revise the public records exemption in s. 414.295, F.S., to include only those state agencies that possess or may be required to possess records of temporary cash assistance recipients. Therefore, the reference to DMS should be removed from s. 414.295, F.S., and a reference to school districts should be added.

[13] Section 119.15(2) and (6)(b), F.S.
[14] Section 445.004(4)(g), F.S.