

2017 LEGISLATIVE UPDATE

A. Guide to Reviewing Legislation

- 1. Bills that have passed the Legislature (enrolled) but have not yet been signed by the Governor. Locate these at flsenate.gov by typing in the bill number in the box called “Go to Bill” Type only the number of the bill, not HB or SB.**

You may access a PDF of the final bill as passed by the Legislature. Be sure that it says “enrolled” on the top corner; this way you know you have the final passed version, not an earlier proposal.

- 2. 2017 Laws of Florida. These bills have been signed by the Governor and are now law. They will be incorporated into the Florida Statutes.**

The Laws of Florida contain two items which are included in the bill but not in the Florida Statutes. The law creating the exemption will contain a section explaining the reason why the Legislature adopted the exemption as required by Article I s. 24, Fla. Constitution. In addition, each new exemption will have an effective date. The effective date is either “upon becoming a law” which is the date that the Governor signs the bill; or another specified date, typically July 1, 2017 or October 1, 2017.

The easiest way to locate the 2017 Laws of Florida is at flsenate.gov by accessing the “laws” site at the bottom of the home page.

- 3. 2017 Florida Statutes.... Should be available online typically by midsummer. Locate at flsenate.gov “laws” site. When the 2017 statutes are available, you can access them there. Until then, the 2016 Statutes will show up without the 2017 legislative changes.**
- 4. Difference between exempt and confidential records**
- 5. Retroactive application**
- 6. Definition of key terms**
- 7. Authorized disclosure—who is entitled to obtain the exempt or confidential records and under what conditions, if any**
- 8. Penalties for unauthorized disclosure**

B. 2017 Legislative Highlights:

1. Attorney fee awards in public records cases

CS/CS/SB 80 amends s. 119.12, F.S. (the statute that provides for an award of attorney fees and reasonable costs of enforcement in a public records action if the court finds that the agency “unlawfully refused” to provide public records).

SB 80 changes the law to mandate an award of fees and costs IF the court

- (1) Determines that the agency unlawfully refused access AND**
- (2) The complainant provided written notice identifying the public record request to the agency’s custodian of public records at least 5 days prior to filing the lawsuit. The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday and legal holidays, and runs until 5 business days have elapsed.**

However, the complainant is NOT required to provide written notice of the public records request to the agency’s custodian of public records, if the agency does not prominently post the contact information for the agency’s custodian of public records in the agency’s primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency’s website, if the agency has a website.

Also, the court shall determine whether the complainant asked to inspect or copy a public record or participated in the civil action for an “improper purpose.” If the court determines there was an improper purpose, the court may not award fees to the complainant and instead shall award fees and costs incurred by the *agency* in responding to the civil action.

The term “improper purpose” means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of the Public Records Act or for a frivolous purpose.

The bill also stipulates that the public records law does not allow monetary damages.

The amendments apply only to public records requests made on or after the effective date of the act.

Effective date: Upon becoming a law.

2. Body camera footage review

CS/HB 305 amends the statutes requiring adoption of procedures regarding the use of body cameras to allow a law enforcement officer using a body camera to review the recorded footage, upon request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties.

Effective date: July 1, 2017. Amending s. 943.1718, F.S.

3. Campus emergency response information

CS/HB1079 provides an exemption for campus emergency response information held by a state university or college or by law enforcement or emergency management agencies. Also exempts portions of meetings which would reveal such exempt information. A “campus emergency response” means an institution’s response to or plan for responding to an act of terrorism, as defined by s. 775.30, F.S., or other public safety crisis or emergency. Allows access by another governmental agency and also upon a showing of good cause before a court.

Reason for the exemption. “A campus emergency response affects the health and safety of the students, faculty, staff, and the public at large. If campus emergency responses were made publicly available for inspection or copying, they could be used to hamper or disable the response of a public postsecondary educational institution to an act of terrorism, or other public safety crisis or emergency. If the institution’s response to these events were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur. There is ample existing evidence of the capabilities of terrorist and other criminals to plot, plan and coordinate complicated acts of terror and violence on university and college campuses all over the country. The aftermath of these events has also showed the importance of viable plans by which public postsecondary education institution can respond to terrorist attacks and other public safety crises or emergencies.”

Effective date: July 1, 2017. Creating s. 1004.0962, F.S. The exemption applies to “campus emergency responses held by a custodial agency before, on, or after the effective date of this section.”

4. Court records/Liability

CS/HB 441 amends s. 119.0714(2), F.S., to provide that the clerk of court is not liable for release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk.

Effective date: July 1, 2017

5. Department of Corrections/Health information

HB 1203 addresses an inmate or offender's protected health information as defined in a cited federal regulation. The exemption specifies authorized disclosures of the information and provides that the information remains confidential if disclosed to those entities and agencies.

Reason for exemption: The Legislature finds that it is a public necessity that an inmate or offender's protected health information and HIV testing information held by the Department of Corrections pursuant to s. 945.10, F.S., remain confidential and exempt from public disclosure. Public disclosure of this information could cause a conflict with existing federal law or violate an inmate or offender's privacy under the state constitution. Appropriate records and protected health information are available to various governmental entities in order for them to perform their duties... to release such information to the public would severely impede their function and would jeopardize the health and safety of those within and outside the prison system.

Effective date: July 1, 2017. Amending s. 945.10, F.S.

6. Dependent eligibility verification/Department of Management Services

SB 2510 provides that records collected for dependent eligibility services for the state group insurance program and held by the Department of Management Services are confidential and exempt. This subsection does not apply to records that are otherwise open for inspection and copying which are held by the department for purposes other than for the performance of dependent eligibility verification services.

Effective date: July 1, 2017. Amending s. 110.12301, F.S.

7. Home addresses, telephone numbers exemption for specified officers and employees

A. Standardize the exemption

As part of the Open Government Sunset Review process scheduled for s. 119.071(4), F.S., the Legislature took steps to make the application of this statute more uniform. For example, in some cases dates of birth of affected employees were exempt but not in all cases. Similarly, some but not all covered employees had to provide evidence that they had taken reasonable steps to prevent the information from being accessed by the public. Accordingly, HB 7093 represents a comprehensive revision to standardize the home address etc., exemption as follows:

a. Dates of birth are added for all categories

b. *Names* of spouses and children are added for all categories

- c. **The requirement that some employees show that they had made reasonable efforts to prevent this information from being publicly available through other means is eliminated**
- d. **Language relating to social security numbers of some employees was eliminated because these numbers are confidential elsewhere in the statutes [s. 119.071(5)(a) and 119.071(4)(a)] so there was no need to repeat the exemption again in s. 119.071(4)(d), F.S.**

Effective date: October 1, 2017

B. Firefighters

The exemption for home addresses etc., of firefighters certified in compliance with s. 633.408, F.S., and their spouses and children, was amended to add former firefighters as well as current firefighters by CS/SB 1108.

Effective date: October 1, 2017

C. Nonsworn investigators in Office of Financial Regulation

Section 119.071(4)(d), F.S., was amended by HB 243 to add a new category of covered employees and their spouses and children: Current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirements violations.

Effective date: Upon becoming a law

8. Insurance fraud investigations/Department of Financial Services

CS/HB 1009 amends s. 626.9891, F.S., to provide that information relating to the investigation and tracking of insurance fraud that is submitted by insurers to the Department of Financial Services is exempt from public disclosure requirements.

Effective date: September 1, 2017. The exemption applies to records held before, on, or after the effective date of the act.

9. International financial institutions

CS/CS/HB 435 revises statutes relating to regulation international trust companies. CS/HB 437 provides confidentiality for, among other things, information identifying customers and shareholders of these institutions that may be in the records of a representative office of the company or the Office of Financial Regulation. Release of information is authorized under specified circumstances.

Effective date: January 1, 2018. Creating ss. 663.416 and 633.450, F.S.

10. Investigations/Department of Elderly Affairs

CS/HB 981 provides confidentiality for the following information held by the Department of Elderly Affairs in connection with investigations into complaints unless disclosure is required by court order: (1) personal identifying information of the complainant or ward (2) personal health and financial records of a ward (3) all photographs and video recordings. Except as otherwise provided in the statute, all information held by the Department is confidential and exempt until the investigation is completed or inactive, unless otherwise provided by court order. Disclosure is authorized to the entities specified in the exemption.

Reason for the exemption: Release of identifying information about a complainant and ward could cause unwarranted damage to the reputation of such individual, especially if the information associated with the individual is inaccurate.

Furthermore, if the complainant and ward are identifiable public access to such information could jeopardize the safety of such individuals by placing them at risk for retaliation by the professional guardian against whom a complaint has been made. Release of identifying information could jeopardize the integrity of the investigation and impair the ability of a law enforcement agency, regulatory agency in the performance of its official duties, and responsibilities, or the clerk of the circuit court, to carry out their statutory duties.

Effective date: July 1, 2017. The exemption applies to all documents received by the department in connection with a complaint before, on or after July 1, 2017. Creating s. 744.2111, F.S.

11. Mug shots/Criminal history records

CS/CS/CS 118 deals with two issues: Section 1 prohibits those in the business of publishing mug shots (arrest booking photographs) from soliciting or accepting a fee to remove a mug shot. It also requires the publishers to remove a mug shot within 10 days of a written request by the subject of the photo and provides a civil action if the publisher does not do so. However, the requirements apply only to those who solicit or accept payments to remove a mug shot.

Section 2 of the bill amends s. 943.0585, F.S., and requires the Criminal Justice Information program at FDLE to administratively seal criminal history records relating to an arrest or incident of alleged criminal activity if notified by the clerk of court that charges weren't filed, were dismissed before trial, or the person charged was acquitted or found not guilty.

Reason for legislation: There is no "justification clause" or rationale included for these proposals. The Legislature apparently did not consider either of these proposals to constitute an "exemption" for purposes of the requirement in Article 1, s. 24 of the Constitution requiring that laws creating an exemption from open

government requirements “state with specificity the public necessity justifying the exemption....”

Effective date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2018.

12. Murder witness identity

CS/CS/HB 111 provides that criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder is confidential and exempt for 2 years after the date on which the murder is observed by the witness. A criminal justice agency may disclose such information:

- a. In the furtherance of its official duties and responsibilities
- b. To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered
- c. To another governmental agency for use in the performance of its official duties and responsibilities
- d. To the parties in a pending criminal prosecution as required by law.

Reason for the exemption: “The judicial system cannot function without the participation of witnesses. Complete cooperation and truthful testimony of witnesses is essential to the determination of the facts of a case. The public disclosure of personal identifying information of a witness to a murder could have an undesirable chilling effect on witnesses stepping forward and providing their eyewitness accounts of murder. A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available....The witness could become the subject of intimidation tactics or threats by the perpetrator of the murder if the witness’s personal identifying information is publicly available.”

Effective date: July 1, 2017. Creating s. 119.071(2)(m), F.S.

13. Non-viable birth certificates

The Legislature passed a bill authorizing the Department of Health to issue non-viable birth certificates upon the request of the family. CS/HB 103 provides confidentiality for information relating to the cause of death, parentage, marital status of the parent, and any medical information included in non-viable birth records held by a state agency. Access is authorized under specified circumstances.

Reason for the exemption: “The Legislature finds that the same [confidentiality] protections [contained in death and fetal death records] should be afforded to a

parent who wishes to memorialize a nonviable birth with a nonviable birth certification as part of his or her grieving process.”

Effective date: July 1, 2017. Amending s. 382.008, F.S.

14. Petitions for involuntary assessment

CS/CS for SB 886 provides that petitions for involuntary assessment and stabilization, court orders, and related records that are filed with or by a court under Part V of Chapter 397 (substance abuse) are confidential and exempt from public disclosure requirements. Upon request, the clerk is authorized to disclose confidential pleadings and other records to the entities set forth in the statute.

Reason for exemption: “A person’s health and sensitive, personal information regarding his or her actual or alleged substance abuse impairment are intensely private matters. The media have obtained, and published information from, such records without the affected person’s consent. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket.”

Effective date: July 1, 2017. The exemption applies to all documents filed with a court before, on, or after July 1, 2017. Creating s. 397.6790, F.S.

15. Postsecondary institution information technology security programs

CS/CS/HB 501 provides confidentiality for records held by a state university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents if disclosure of such records would facilitate unauthorized access to or modification, disclosure, or destruction of data, information, or information technology resources. Security information relating to risk assessments and other reports of an institution’s cyber security programs is also included. Disclosure is authorized to specified agencies. Portions of meetings at which such exempt information is discussed are exempt from the Sunshine Law, provided that the exempt portions are recorded. The recording is confidential but access may be allowed by court order.

Effective date: Upon becoming a law. The exemptions apply to records held before, on, or after the effective date of this act. Creating s. 1004.055, F.S.

16. Protective injunction petition

CS/HB 239 provides that injunctions for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking or cyberstalking that are dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction or that are dismissed for any reason having to do with the sufficiency of the petition without an injunction being issued on or after July 1, 2017 are exempt from public disclosure requirements. Prior to July 1, 2017, the

exemption applies only upon the written request of the person named in the petition as a respondent.

Reason for the exemption: “The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that removing such a record from public disclosure is the sole means of protecting the reputation of such an individual.”

Effective date: July 1, 2017. Amending s. 119.0714, F.S.

17. Sexual harassment victims

CS/CS/HB 397 provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt. The information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

Reason for the exemption: Disclosure of identifying information could harm alleged victims by placing them at risk of further harassment and retaliation. Additionally, the potential for disclosure could create a disincentive for alleged victims to report instances of alleged harassment.

Effective date: Upon becoming a law. Creating s. 119.071(2)(m), F.S.

18. Workers compensation/Injured or deceased employees

CS/SB 1107 provides that personal identifying information, as defined in the exemption, of an injured or deceased employee which is contained in records held by the Department of Financial Services pursuant to Ch. 440, F.S., is confidential and exempt. Disclosure is authorized under specified circumstances.

Reason for the exemption: “Because of Florida’s worker’s compensation system, an employee’s personal identifying information becomes public record once the Department of Financial Services is notified that the employee has been injured or has died in a work-related incident. Public records requests for this information have resulted in unwanted solicitation of injured workers and their families. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers and others because of perceived social stigma related to injuries or disabilities. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.”

Effective date: July 1, 2017. The public records exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption. Creating s. 440.1851, F.S.

C. Significant legislation which did NOT pass

1. Sunshine Law/Private meetings of two members

HB 843 would have amended the Sunshine Law to allow two members of a board or commission with more than 5 members to meet in private and discuss public business provided that they did not take “formal action” or discuss “an appropriation.” The bill passed the House but without enough votes to meet the 2/3 vote standard for approval of new exemptions that is required in Article 1, s. 24, Fla. Const. It was not taken up in the Senate.

2. Sunshine Law/Fact-finding meetings

SB 914 would have allowed “fact-finding” meetings if notice and minutes were provided and no action was taken at the “fact-finding” meeting. The bill would have clarified that social gatherings were not prohibited. This bill passed the Senate but was withdrawn from consideration in the House on May 5.

3. Public records and Sunshine Law exemption/University and college presidential search

CS/HB 351 would have exempted information identifying applicants for president, provost or dean of a state university or college. An exemption for meetings held to identify or vet applicants would also have been created. Meetings after the finalists were selected would have been open as well as the names of the finalists. This bill passed the House but was withdrawn from the Senate on May 5.