

2016 FRMA LEGISLATIVE UPDATE

A. Guide to Reviewing Legislation

- 1. 2016 Laws of Florida.** Easiest way to locate is at flsenate.gov by accessing the “laws” site at the home page.

Justification section (explains legislative intent). Can also access legislative bill analyses from the flsenate.gov website home page by typing in the bill number (only the numerals, not SB or HB) in the “Go to bill” box next to 2016 at the top of the page.

Effective Date—either a specific date (i.e. July 1, 2016); “upon becoming a law (date Governor signs the bill); or the date another law becomes effective.

- 2. 2016 Florida Statutes....** Available online in summer 2016. Locate at flsenate.gov “laws” site
- 3. Exempt or confidential records**
- 4. Retroactive application**
- 5. Definition of key terms**
- 6. Authorized disclosure—who is entitled to obtain the exempt or confidential records and under what conditions, if any**
- 7. Entities or individuals whose records are not subject to the exemption**
- 8. Conditions which must be complied with by the subject of the record before the exemption is applicable**
- 9. Penalties for unauthorized disclosure**

B. 2016 Legislative Highlights:

- 1. State agency IT security.**

Records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt if

disclosure would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data, or information technology resources. Also creates an exemption for portions of risk assessment, evaluations, external audits, and other reports of a state agency's information technology program. Disclosure is authorized to specified agencies. Retroactive application. Chapter 16-114, Laws of Florida (SB 624), amending s. 282.318, Laws of Florida. Effective date: March 25, 2016.

2. Trade Secrets

Chapter 2016-05, Laws of Florida (SB 180) amends the definition of trade secret in s. 812.081, F.S., to include "financial information." Chapter 16-06, Laws of Florida (SB 182) amends several statutes providing an exemption for trade secrets as defined in s. 812.081, F.S., to incorporate by reference to the expanded definition established in Ch. 2016-05. Effective date: October 1, 2016.

3. Private "contractors" providing services to an agency

Amends s. 119.0701, F.S., to provide that each public agency contract for services entered into or amended on or after July 1, 2016 must include a statement identifying the contact information of the public agency's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address)

In addition, the contract must contain provisions requiring the "contractor" to comply with public records laws and include a provision stating that upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Ch. 119, F.S., or as otherwise provided by law.

Also amends s. 119.0701, F.S., to provide that a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the

public agency must immediately notify the contractor, as defined in the exemption, of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied in a reasonable time. A contractor who fails to provide the records to the agency within a reasonable time may be subject to penalties as provided in s. 119.10, F.S.

The definition of “contractor” is not changed and still is defined as those entities that are “acting on behalf of a public agency” so as to constitute an agency subject to the Public Records Act. In other words not all contractors are “contractors” for purposes of s. 119.0701, F.S. (See AGO 14-06). Chapter 16-20, Laws of Florida (HB 273). Effective date: March 8, 2016.

4. Public-private partnerships for construction of public facilities and infrastructure

The public-private partnership process allows a “responsible public entity” to request proposals from private entities for certain projects and to accept unsolicited proposals. However, current law only authorizes exemptions for *competitive* solicitations. The 2016 legislation provides an exemption for unsolicited proposals for specified periods and also provides an exemption from the Sunshine Law for discussions relating to exempt proposals provided that the meetings are recorded. Chapter 16-154, Laws of Florida (SB 126). Creates s. 255.065, F.S. Effective date: July 1, 2016

5. Security plan/ Surveillance video release

Security system plans and information relating to security systems are confidential in ss. 119.071(3)(a), and 281.301, F.S. In *Central Florida Regional Transportation Authority v. Post-Newsweek Stations* (2015), the appellate court held that surveillance video on a city bus directly related to a security system plan and therefore was confidential and exempt under s. 119.071(3)(a) and s. 281.301, F.S. The new law amends these statutes to add circumstances to authorize release of surveillance video and other security information that falls within the scope of the exemption. For example, surveillance video of a robbery at a convenience store which is obtained by a police department may be released to the property owner or leaseholder, in the furtherance of the official duties and responsibilities of the agency holding the information, to another governmental agency in the performance of its duties, or by court order on a showing of good cause. Chapter 16-178, Laws of Florida (SB 1004). Effective date: April 1, 2016

- 6. Personal information pertaining to Department of Financial Services nonsworn investigators performing listed duties; emergency medical technicians or paramedics certified under Ch. 401, F.S.; and agency inspector general or internal audit personnel performing listed duties**

Chapter 119, F.S., was amended to provide exempt status for the home address, telephone number, date of birth, and photograph of current or former personnel (and their spouses and children) as identified above. The amendments provide that with the exception of the DFS investigators, the exemption applies only if the personnel have made reasonable efforts to protect such information from being reasonably accessible to the public. Chapters 16-159 (SB 592) and 164 (SB 752), Laws of Florida. Amending s. 119.071(4)(d)2., F.S. Effective date: March 30, 2016.

- 7. Office of Insurance Regulation reports**

A new exemption provides for confidentiality of certain reports and documents submitted to the Office of Insurance Regulation related to an own-risk and solvency assessment by an insurer or insurance group, as well as corporate governance annual disclosure and supporting documents submitted to the Office. Chapter 16-205, Laws of Florida (SB 1416). Amending s. 624.4212, F.S. Effective date: October 1, 2016.

- 8. Juvenile offender records**

Section 985.04, F.S., was amended to modify some of the circumstances for release of juvenile offender records to the public. As now worded, this statute states that juvenile confidentiality provisions do not apply to the name, photograph, address, and crime or arrest report of a child

- a. Taken into custody by a law enforcement officer for a violation of law, which if committed by an adult, would be a felony**
- b. Charged with a violation of law which, if committed by an adult, would be a felony**
- c. Found to have committed an offense which if committed by an adult, would be a felony;**
- d. Transferred to adult court**

Another provision of the new law states that the custodian of non-exempt booking photographs of a child may choose not to electronically post such photographs on the agency website. However, this provision does not restrict public access to

records as provided by s. 119.07, F.S. Chapter 16-78 (HB 293). Effective date: March 24, 2016.

Note: Chapter 2016-42, Laws of Florida, revised existing provisions relating to expunction of criminal history records of minors.

9. Local government utility technology systems security information

Information related to the security of information technology systems or industrial control technology systems of a utility owned or operated by a local government is exempt under a new law. Retroactive application. Chapter 16-95 (HB 1025) Amending s. 119.0713, F.S. Effective date: March 24, 2016.

10. State infrastructure bank

A new exemption was created for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank. The exemption does not apply to records of an applicant who is in default of a loan issued under this section. Financial information means any business plan, pro forma statement, account balance, operating income or revenue, asset value, or debt of the applicant. Chapter 16-38, Laws of Florida (SB 196). Amending s. 339.55, F.S. Effective date: July 1, 2016

11. Nurse licensure compact

The Legislature enacted the Nurse Licensure Compact, a multi-state agreement that establishes a national recognition system of licensure of nurses, allowing nurses who receive multi-state licenses in other states to practice in Florida. As part of this effort, the Legislature enacted a public records exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number, "obtained from the coordinated licensure information system" and held by the Florida Board of Nursing or the Department of Health. In addition, meetings of the Interstate Commission of Nurse Licensure Compact Administrators where matters specifically exempt under federal or state law are discussed are exempt from the Sunshine Law. Chapter 16-97, Laws of Florida (HB 1063), creating s. 464.0096, F.S. Effective date: December 31, 2018, or whenever 26 states enact the Nurse Licensure Compact into law, whichever occurs first.

12. Depiction or recording of a killing of a law enforcement officer (Open Government Sunset Review resulting in narrowing of existing exemption)

Section 406.136, F.S., was enacted five years ago to provide confidentiality for the photograph, video or audio recording of the killing of a “*person*” including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. This statute was reviewed by the 2016 Legislature as part of the Open Government Sunset Review process. During the review process, the Legislature significantly narrowed the scope of the statute by amending it to apply only to the photograph, video, or audio recording that depicts or records the killing of a “*law enforcement officer who was acting in accordance with his or her official duties . . .*” The other provisions of the statute remain the same (i.e. entities authorized to access the recording etc.). The change takes effect October 1, 2016. Chapter 16-214, Laws of Florida (SB 7022).

13. Proprietary confidential business information obtained by Florida State Boxing Commission

Section 548.062, F.S., was amended to provide that proprietary confidential business information provided by a promoter to the State Boxing Commission or obtained by the Commission through an audit of the promoter’s books and records is confidential. Disclosure is authorized to another governmental entity in the performance of its duties and responsibilities. Chapter 16-21, Laws of Florida (HB 381). Effective date: July 1, 2016.

14. Department of Agriculture and Consumer Services investigations

This legislation provides confidentiality for criminal or civil intelligence information or any other information held by the Department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency. Release is authorized in accordance with conditions imposed by the joint or multiagency agreement or in the furtherance of its official duties or the duties of another governmental agency. The exemption does not apply to information held by the department as part of an independent examination or investigation conducted by the department. Chapter 16-121, Laws of Florida (SB 754) creating s. 570.077, F.S. Effective date: March 30, 2016.

15. Open Government Sunset Review exemptions that were reenacted without substantive changes:

- a. **Florida Health Choices Program participants. Reenacting s. 408.910(4), F.S.**
- b. **Florida Center for Brain Tumor Research donor identifying information. Reenacting s. 318.8531, F.S.**
- c. **Competitive solicitation records and meetings. Reenacting ss. 119.071(1)(b), and 286.0113(2), F.S.**
- d. **Emergency notification system personal information. Reenacting s. 119.071(5)(j), F.S.**
- e. **Office of Financial Regulation investigations. Reenacting s. 119.0712(3), F.S.**
- f. **Regional Autism Center client records. Reenacting s. 1004.55, F.S.**
- g. **Local government audit reports and investigative reports of inspectors general. Reenacting with minor changes s. 119.0713(2), F.S.**

16. Counties holding joint meetings with adjacent counties or municipalities

Section 125.001, F.S., was amended to authorize boards of county commissioners to hold joint meetings with the governing body or bodies of one or more adjacent counties or municipalities to discuss matters regarding land development, economic development, or any other matters of mutual interest at any appropriate public place within the jurisdiction of any participant county or municipality but only if the board provides “due public notice” within the jurisdiction of all participating municipalities and counties. To participate, the county or municipality must first adopt a resolution authorizing such participation. No official vote may be taken at the joint meeting. The joint meeting does not take the place of any public hearing required by law. Chapter 16-48, Laws of Florida (HB 1361). Effective date: July 1, 2016.

Significant legislation which did not pass---Attorneys fees in public records cases.

House Bill 1021, filed by Representative Steube, would have amended s. 119.012 to change the current language which now requires the judge to award attorney’s fees in the event that the agency is found to have unlawfully refused access, to provide that the judge “may” award fees. A compromise bill passed the Senate, SB 1220, and would have required the judge to award fees in the event of a refusal IF the complainant provided written notice identifying the public records request to the agency’s custodian of public records at least 5 days before filing suit. The complainant was not required to provide notice if the agency does not prominently post the contact information for the custodian in the primary administrative building of the agency and on the agency’s website. The Senate version also stated that the court may not award fees and costs if the court determines that the request

was made primarily to harass the agency or cause a violation. However, the Legislature adjourned while the Senate Bill was still in House messages so it never become law.