



14 August 2013

The Honorable Steve Precourt, Chair
House State Administration Committee
Florida House of Representatives
402 S. Monroe Street
Tallahassee, FL 32399-1300

The Honorable Jeremy Ring, Chair
The Committee on Governmental Oversight and Accountability
The Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: 2014 Open Government Sunset Reviews

Dear Representative Precourt and Senator Ring:

The First Amendment Foundation has conducted its initial review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2014 legislative session. Our comments on each follow below:

Section 119.071(4)(a) – Provides an exemption for the social security numbers of all current and former agency employees held by the employing agency. While the First Amendment Foundation is not opposed to the general exemption for social security numbers in s. 119.071(5)(a), F.S., we do question the need for this additional level of protection for agency employees. Additionally, the exemption makes the social security numbers confidential and exempt, and does not contain a provision for the sharing of an agency employee's social security number with any other entity, whether government or private. It is our position the general exemption in s. 119.071(5)(a) provides sufficient protection for social security numbers contained in any public record and that the specific exemption in s. 119.071(4)(a) be allowed to sunset.

Section 119.071(4)(b) 2.a. – This exemption for personal identifying information of the dependent children of agency officers and employees who are covered by group insurance plans is sufficiently narrow and the Foundation is not opposed to its reenactment as currently drafted.

Section 288.9551 – Provides numerous public record exemptions for the Scripps Florida Funding Corporation, as well as an exemption for those meetings of the corporation's board at which confidential and exempt information is discussed. The First Amendment Foundation has

opposed the Scripps exemptions since first enacted. Although the public record exemptions were narrowed slightly in 2009, it is our position that, with the exception of the meeting exemption, the exemptions contained in s. 288.9551 are unconstitutionally overbroad. We recommend, therefore, the exemptions be narrowed to reflect those exemptions currently in law for other, similar research institutions. We do not object to reenactment of the meetings exemption as currently drafted.

Section 288.985 – These exemption for records relating to base closures and realignment held by the Florida Defense Support Task Force, and meetings of the Task Force at which such records are discussed, are sufficiently narrow, and we are not opposed to reenactment of the exemptions. However, given the fact that there will presumably be an end to the BRAC process at some point, we suggest that s. 288.985 continue to contain a sunset review requirement.

Section 631.582 – This is a narrow exemption protecting certain, specified records of the Florida Insurance Guarantee Association and we do not object to reenactment of s. 631.582 as currently drafted.

Section 733.604 – This is a narrow exemption for estate inventories and accountings, and the Foundation is not opposed to reenactment of the exemption.

Section 893.0551 – When this exemption was first enacted in 2009, the First Amendment Foundation objected to the protection of information identifying physicians and pharmacists contained in prescription drug monitoring program records. We maintain that objection and recommend that s. 893.0551 be amended to protect only patient identifying information.

Section 1002.221 – Provides an exemption for K-12 education records as required by the federal Family Educational Rights and Privacy Act (FERPA). The Foundation does not object to reenact of this exemption, but would like to note that the exemption is frequently misinterpreted and misapplied.

Section 1006.52 – Authorizes public postsecondary educational institutions to prescribe the content and custody of records the institution maintains on its students and applicants for admission. As noted above, federal law requires protection of student education records, and s. 1006.52, provides an exemption for student education records and applicant records; the term “applicant records” is statutorily defined. We believe this exemption is sufficiently narrow and do not opposed reenactment of the exemption as currently drafted.

Section 1008.24 – Provides an exemption for certain identifying information contained in allegations of misconduct related to the administration of tests by schools and postsecondary educational institutions until investigations into such allegations are complete or no longer active. The exemption, limited in terms of time, is sufficiently narrow and the Foundation is not opposed to its reenactment in its current form.

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We appreciate the opportunity to comment on the exemptions under review, and only wish there were fewer. If we can provide additional information or answer any questions, please don't hesitate to contact us.

Sincerely,

Barbara A. Petersen

Barbara A. Petersen, President

cc: Rep. Jim Boyd, Chair, H. Government Operations Subcommittee
Heather Williamson, Policy Chief, H. Government Operations Subcommittee
Joe McVaney, Staff Director, S. Governmental Oversight & Accountability Committee
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