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05 August 2015

The Honorable Michael Bileca, Chair
Government Operations Subcommittee, The Florida House of
Representatives
402 S. Monroe Street, Room 218 HOB
Tallahassee, FL 32399-1300

The Honorable Jeremy Ring, Chair
Committee on Government Oversight and Accountability, The Florida Senate
404 S. Monroe Street, Room 525 Knott
Tallahassee, FL 32399-1100

Re: 2016 Exemptions Subject to Open Government Sunset Review

Dear Representative Bileca 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 2016 legislative session. Our comments on each follow below:

Sections 119.071(1)(b) and 286.0113(2) - Competitive Solicitations:

These exemptions for certain records and meetings relating to the competitive solicitation process are sufficiently narrow and the First Amendment Foundation does not object to the reenactment of the exemptions as currently drafted.

Section 119.071(5)(j) - Emergency Notification System: This public record exemption specific information furnished to an agency for the purpose of emergency notification by the agency is narrowly tailored and the Foundation does not object to its reenactment as currently drafted.

Section 119.0712(3) - Office of Financial Regulation: We are not opposed to the reenactment of this public record exemption related to OFR examinations or investigations.

Section 119.0713(2) - Inspector General Reports: This is a limited exemption for investigative and audit reports of local government inspectors general and the Foundation is not opposed to its reenactment as currently drafted.

Section 381.8531 - Florida Center for Brain Tumor Research: This exemption for personal identifying information of donors to the central repository for brain tumor biopsies or the brain tumor registry is sufficiently narrow and we do not oppose its reenactment.

Section 406.136 - Photographs and Videos Depicting Killing of a Person: Provides a public record exemption for photographs, videos, or audio recordings depicting or recording the “killing of a person,” defined as “all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.” The Foundation expressed serious concerns regarding the breadth of this exemption and requested a veto. We recognize that such recordings may be highly sensitive, but access by citizens and the media is vital to ensure oversight of governmental action and to ensure governmental officials and employees are held accountable.

The very importance role of public access to these recordings is evidenced by the case of Martin Lee Anderson. In January of 2006, Mr. Anderson died at the Bay County Boot Camp, which was operated by the Bay County Sheriff’s Office. The Medical Examiner ruled that the teen died of “complications from sickle cell trait” and that his death was “natural.” A video, however, showed a group of government employees forcefully coercing the teen to continue exercising after he collapsed and using ammonia to revive him. When the videotape was released, a public outcry resulted in performance of another autopsy, which showed that Anderson’s death was caused by suffocation due to the actions of the government employees. As a result, the Legislature closed boot camps and manslaughter charges were brought against the government employees.

While the law allows family members and certain governmental authorities to access these public records, it requires other persons to petition a court to obtain the right to view or copy the records upon a showing of good cause. This requires citizens and the media to pay court costs and legal fees in order to copy or even view the records, which greatly restricts public oversight of the actions of government employees.

It is our opinion that section 406.136 is unnecessarily overbroad and unduly limits the public’s constitutional right of government oversight and accountability. We respectfully suggest that the exemption be allowed to sunset.

Section 408.910(14) - Florida Health Choices Program: Provides a limited public record information held by Florida Health Choices, Inc., including information identifying participants and proprietary confidential business information. The First Amendment Foundation is not opposed to its reenactment as current drafted.

Section 1004.55(6) - Regional Autism Centers: This public record exemption for clients of regional autism centers who receive center services or participate in center activities and the

identity of donors to such centers is sufficiently narrow and we are not opposed to its reenactment.

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

Sincerely,

A handwritten signature in blue ink, appearing to be 'B.A.P.', written in a cursive style.

Barbara A. Petersen, President

cc: Heather Williamson, Policy Chief, H. Government Operations Subcommittee
Joe McVaney, Staff Director, S. Governmental Oversight & Accountability Committee
Jon Kaney, FAF General Counsel, Kaney and Olivari, P.A.
Sam Morley, General Counsel, Florida Press Association
Gil Thelen, Executive Director, Florida Society of News Editors