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11 July 2016

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: 2017 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 2017 legislative session. Our comments on each follow below.

Section 119.071(4)(d) Government Employees and Officers/Telephone

Numbers and Dates of Birth: There are numerous home address exemptions for a variety of government employees and officers. In 2012, the legislature approved CS/HB 629, expanding these exemptions to include within the exemption personal telephone numbers and dates of birth for all of the protected employees and their spouses and children.

The First Amendment Foundation opposed the expansion, making particular note of the fact that the home address exemptions are intended to protect locating information of certain employees and their families because the duties of such employees pose a threat to their physical safety and that of their family.

Article I, section 24(c), Fla. Con., requires that all proposed exemption to our public records law, whether new exemptions or newly expanded exemptions, contain a factually specific statement of public necessity; the proposed exemption can be no broader than its stated purpose.

The statement of necessity for the personal telephone numbers in CS/HB 629 stated that such information could potentially lead to the identification and location of such employees, putting them and their families at risk. The date of birth exemption was predicated upon the assertion that disclosure of a birth date could subject the employee or family member to fraud and the threat of financial or personal harm.

The need for these exemptions is speculative at best. In addition, the inclusion of dates of birth within the home address exemptions in s. 119.071(4)(d) does not fit within the purpose of the home address exemption – that is, to protect location information of certain government employees and their families. For these reasons, we respectfully suggest that the exemptions for personal telephone numbers and dates of birth be allowed to sunset.

Sections 119.071(4)(d)2.k and 2.l Home Addresses – DBPR & Tax Collectors: The First Amendment Foundation didn't object to these exemptions. However, as a rule, before signing off on a home address exemption, that evidence of the need for the exemption – that is, some sort of evidence that the employees and their families have been threatened or faced some sort of risk because of their employment. We suggest, therefore, that legislative staff revisit the issue of whether the exemption is, in fact, needed to protect the included employees and their families.

In addition, as noted above, there are numerous exemptions home addresses, etc. of certain government employees. Most of these exemptions, but not all, are found in s. 19.071(4)(d), F.S. The home address exemptions are inconsistent on the level of protection provided – some of the exemptions stipulate that the protected information is confidential and exempt, and others provide that the information is merely exempt. Additionally, there is inconsistency in terms of what information is protected.

We strongly urge the Legislature to consider consolidating all home address exemptions for government employees and officers into one section in ch. 119 and address the lack of consistency by creating one standard of protection.

Sections 215.56021(1) – (4) Biomedical Research Facilities: The exemption for portions of meetings of peer review panels of specified biomedical research facilities during which research grant applications are discussed is sufficiently narrow and the Foundation doesn't object to reenactment of the limited meetings exemption in s. 215.56021(1).

Sections 215.56021(2) and (3), F.S., create a public record exemption for records created during the closed portions of peer review panel meetings and for applications provided to the peer review panels. Subsection (4) allows disclosure of the exempt records at the express direction of the person to whom the information pertains or by court order upon a showing of good cause.

These broad public record exemptions preclude any meaningful opportunity for public oversight of the peer review panels and their recommendations. Thus, we suggest that the public record exemptions be amended to allow access to the protected records at a specified period of time or, in the alternative, that period of time at which the records no longer need the protection of an exemption.

Section 265.7015 – Donors/Performing Arts Centers: This public record exemption for information identifying donors or prospective donors to publicly-owned performing art centers who request anonymity is narrowly tailored and the Foundation does not object to its reenactment as currently drafted.

Section 265.7015 – Donors/Historic Capitol Museum: We are not opposed to the reenactment of this public record exemption for information identifying donors or prospective donors to the Legislative Research Center and Museum of the Historic Capitol who request anonymity.

Sections 381.92201(1) – (4) – Biomedical Research Facilities: This exemption for certain meetings and records of the peer review panels of specified research facilities is duplicative of the exemptions provided for in ss. 215.56021(1) – (4). Our concerns regarding these exemptions is discussed above and apply to the exemptions in ss. 381.92201(1) – (4). Additionally, if the two exemptions are indeed mere duplicates, we recommend that one of the two be allowed to sunset.

Section 601.10(8)(b) – Non-Published Citrus Research Reports and Data: This is a limited exemption for non-published reports and data related to research of citrus diseases and crop efficiency. Once the reports and data are published, the exemption expires. The Foundation is not opposed to reenactment of this exemption as currently drafted.

Section 626.84195 – Proprietary Business Information/Title Insurance: This exemption for propriety business information provided to the Office of Insurance Regulation by title insurance agencies and insurers is sufficiently narrow and we do not oppose its reenactment.

Section 717.117(8) – Unclaimed Property Reports: Section 717.117(8), F.S., provides a public record exemption for social security numbers and property identifiers contained in unclaimed property reports held by the Department of Financial Services. Prior to review under the Open Government Sunset Review Act in 2012, attorneys, certified accountants, and licensed private investigators registered with DFS were allowed access to the exempt information, thus allowing them the ability to find the owners of unclaimed property. In 2012, however, the exception to the exemption for these licensed professionals was deleted, meaning that social security numbers and property identifiers contained in unclaimed property records are exempt from public disclosure and cannot be released, and only the government can attempt to locate owners of unclaimed property. We suggest that the decision to delete the exception for a small number of licensed professional be reviewed with the goal of reinstating a right of access for the limited purpose of locating owners of unclaimed property.

Sections 741.30(8)(c)5.b and 784.046(8)(c)5.b – Locating information/Victims of Violence: These exemptions provide exemptions for information provided to a clerk of court and law enforcement that would lead to the location of victims of certain violent crimes in order for such victims to receive

notification when a requested restraining order has been served. There are limitations on the duration of the exemption and the First Amendment Foundation is not opposed to reenactment of the two exemptions as current drafted.

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.', with a stylized flourish.

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