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14 August 2017

The Honorable Matt Caldwell, Chair
Government Accountability Committee
The Florida House of Representatives
402 S. Monroe Street, Room 209 HOB
Tallahassee, FL 32399-1300

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

Re: Exemptions Subject to Open Government Sunset Review - 2018

Dear Representative Caldwell and Senator Baxley:

The First Amendment Foundation has conducted its annual review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2018 legislative session. Our comments on each follow below.

Section 68.083(8)(a) False Claims Act Investigations: The public record exemption for complaints and information held by the Department of Financial Services during an investigation of possible violations of the False Claims Act is sufficiently narrow and limited in duration. The First Amendment Foundation does not object to reenactment of the exemption as currently worded.

Section 112.324(2) Commission on Ethics/Written Referrals: The public record exemption for written referrals and related records held by the Ethics Commission, the Governor, FDLE, or state attorneys, as well as records relating to preliminary investigations of such referrals held by the Commission is sufficiently narrow and limited in duration. The First Amendment Foundation does not object to reenactment of the exemption as currently worded.

Section 119.071(2)(k)1. Complaints of Employee Misconduct: This public record exemption for complaints of misconduct filed against a public employee, as well as all information obtained while investigating such complaints, is limited in duration and the Foundation is not opposed to its reenactment.

Section 119.0713(4) Electric Utilities – Proprietary Business Information: The public record exemption for proprietary confidential business information provided to a public electric utility by a private or out-of-state entity to a public electric utility in connection with electric projects is sufficiently narrow and the Foundation does not object to its reenactment as currently worded.

Section 286.01141 Meetings – Criminal Justice Committees: The FAF does not object to the reenactment of this exemption for portions of meetings of a “duly constituted criminal justice commission” during which commissioners discuss active criminal intelligence or investigative information if such information is currently before the commission.

Section 377.24075 Natural Gas Storage – Proprietary Business Information: The public record exemption for proprietary business information held by the Department of Environmental Protection (DEP) related to applications for natural gas storage permits meets the constitutional standard. The First Amendment Foundation is not opposed to reenactment of the exemption as currently worded.

Section 560.312 Exemption/Financial Regulation Payments: The Office of Financial Regulation (OFR) is required to maintain payment instrument transaction information in a centralized database. “Payment instrument” is statutorily defined as “a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.” In 2013, the Florida Legislature approved CS/HB 7135, creating a public record exemption for payment transaction information which identifies a licensee, payor, payee, or conductor contained in the database held by OFR. The First Amendment Foundation opposed the passage of CS/HB 7135.

Article I, s. 24(c), of the Florida Constitution requires that proposed exemptions to the public records law include a specific statement of public necessity and that the exemption be no broader than its stated purpose. The constitutionally-required statement of public necessity in CS/HB 7135 spoke of the need to protect sensitive financial information, insurance carriers, and worker’ compensation information, yet the exemption shields virtually *all* information in the transaction database from public oversight. In addition, we took the position this exemption is unnecessary considering the numerous protections against personal identity fraud in both Florida and federal law.

We respectfully suggest, then, that s. 560.312 be allowed to sunset or, in the alternative, that the exemption be significantly narrowed to meet the constitutional standard.

Section 595.409 School Lunch Program: The public record exemption for the personal identifying information of an applicant or a participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the

Department of Education, is sufficiently narrow and the Foundation is not opposed to its reenactment.

Section 627.3518(11) Citizens Property Insurance – Proprietary Business Information: The exemption for proprietary business information provided to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program is sufficiently narrow and the Foundation does not oppose its reenactment as currently worded.

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 agencies 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 currently drafted.

Section 943.0583(10) Criminal History Records – Human Trafficking Victims: In 2013, the expungement statutes were changed to allow for the court-ordered expungement of a human trafficking victim’s criminal history. Section 943.0583(10) provides a public record exemption for a human trafficking victim’s criminal history record that was expunged by a court order. The First Amendment Foundation does not object 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 read 'B.A.P.', is positioned above the typed name.

Barbara A. Petersen, President

cc: Heather Williamson, Staff Director, H. Government Accountability Committee
Jay Ferrin, Staff Director, S. Governmental Oversight & Accountability Committee
Jon Kaney, FAF General Counsel
Sam Morley, General Counsel, Florida Press Association
Gil Thelen, Executive Director, Florida Society of News Editors