



March 9, 2021

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House Regulatory Reform Committee
303 House Office Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Re: HB 971 Pub. Rec./Consumer Data Privacy

I write to express the First Amendment Foundation's concerns with House Bill 971, which will be heard before the House Regulatory Committee on Wednesday, March 10.

FAF objects to making investigation records confidential. Notably, the active criminal intelligence information and active criminal investigative information exemption only exempts such information; it does not make the information confidential. Fla. Stat. § 119.071(2)(c).

Making a record "confidential and exempt" has a completely different consequence than making a record merely "exempt." Because the information is only exempt, the statute does not prohibit the release of such information, but rather gives discretion to the record custodian to act in the best interest of the public. As courts have noted, there "are many situations in which investigators have reasons for displaying information which they have the option not to display." *Williams v. City of Minneola*, 575 S. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991). However, House Bill 971 makes investigative information received the Department of Legal Affairs or law enforcement "confidential," contrary to Fla. Stat. § 119.071(2)(c).

Information that is only exempt by another statute could become "confidential and exempt" by this bill, further shielding important information regarding accountability from the public. Accordingly, FAF opposes this exemption to the extent it makes records "confidential."

If you have any questions, please do not hesitate to contact us.

With best regards,

FIRST AMENDMENT FOUNDATION



Pamela C. Marsh
President

cc: The Honorable Chris Sprowls, Speaker, Florida House
The Honorable Fiona McFarland, Florida House
Jim Baltzelle, Associated Press, Chair, First Amendment Foundation
Samuel Morley, General Counsel, Florida Press Association
Lisa Nellessen Savage, Chair, Florida Society of News Editors