

November 12, 2021



The Honorable Senator Danny Burgess
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: 2021 Special Session B – Senate Bill 4B

Dear Senator Burgess:

The First Amendment Foundation writes to express our concerns with SB 4B and its failure to meet the constitutional standard for public records exemptions because it exempts more information than is necessary to achieve its stated purpose.

The Florida Supreme Court has ruled that a public meeting exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Halifax Hosp. Med. Ctr. v. News Journal Corp.*, 724 So. 2d 567 (Fla. 1999). The legislature has an obligation to tailor an exemption so that it is no broader than necessary to accomplish the exemption's stated purpose. *Id.* at 570.

SB 4B's public necessity statement asserts that the release of information could be used to harass or target the complainant and could discourage employees from making a complaint. Yet, the exemption does far more. It exempts and makes confidential the entire complaint without providing a reason for withholding information pertaining to the employer or investigation.

Because certain information remains exempt and confidential, the public cannot hold the government accountable regarding how investigations are handled. How would the public know whether complaints for medical or religious exceptions were treated with fairness and sensitivity to all medical conditions and all religions?

In addition, the bill is vague in at least two ways. First, SB 4B allows release of data in aggregate form, but aggregate is left undefined. Second, the bill allows an agency to maintain confidentiality of the records indefinitely if disclosure would "jeopardize the integrity of another investigation."

Finally, while the exemption would expire on October 2, 2023, it is unclear from the text of the amendment whether certain information would remain confidential.

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As written, SB 4B is broader than necessary, in violation of Art. I, § 24(c) of the Florida Constitution. The public necessity statement provides no reason for exempting the entire complaint or employer information. The bill fails to articulate what information can be released in an aggregate form and fails to define when full disclosure is required when a related investigation is pending or upon the sunset of the law.

As a result, the First Amendment Foundation intends to oppose SB 4B. If you should have any additional questions, please do not hesitate to contact us.

Sincerely,

FIRST AMENDMENT FOUNDATION, INC.

A handwritten signature in blue ink that reads "Pamela C. Marsh". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Pamela C. Marsh
Executive Director