



First Amendment FOUNDATION

Protecting Your Right to Know Since 1985

In 1992, when lawmakers from both sides of the aisle approved a resolution to place a constitutional right of access on the ballot, the legislature created a stringent standard to create exemptions to the public records and meetings law. At the time, it was noted that the dual requirements – exemptions serve a specific public necessity and be narrowly drawn to accomplish the purpose – would serve as a critical check on exempting access to records and meetings. Thirty years later, exemptions are flying through committees and chambers with little question and dissent. There is minimal interrogating whether a proposed exemption is necessary or whether the purpose sought can be achieved by alternative means.



We are a government for, by, and of the people. It is the people who lose when exemptions are passed. The public is denied their constitutional right of access. The public is in the dark regarding what their government is doing, who is influencing government, and how the government is spending tax dollars. The public is less informed when deprived of knowledge of its government. As Founding Father James Madison argued: “Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.” More exemptions mean less knowledge and less power of the people.

- Education Records
- Home Address
- Corrections Records
- Law Enforcement Records
- Agency Records
- Health Records
- Court Records

Education records

HB 703/SB 520 Public Records and Public Meetings

Sam Garrison (R-Orange Park), Jeff Brandes (R-St. Petersburg)

Exempts and makes confidential personal identifying information of an applicant for president of a state university or college. Information of an applicant included in the final group of candidates becomes public either when the final group is established or 21 days before a meeting to interview an applicant or take final action to select a president. Exempts from the Sunshine Law meetings to vet applicants or which would reveal personal identifying information of applicants. Supporters argue that the exemption is needed for a search committee to avail itself to the more qualified and experienced candidate. Yet, the recent search at Florida State University led to finalists from esteemed institutions with extensive research backgrounds. The purported justification is undermined by recent searches. The Senate Governmental Oversight and Accountability committee approved the measure 4-2. The House Post-Secondary Education & Lifelong Learning Subcommittee voted 14-4 in favor of HB 703 and approved an amendment reducing the time when names become public to just 14 days before an interview or final vote.

SB 7004 OCSR/Technology Systems/State University or A Florida College System Institution

Reinstates exemption for records held by a university or college to identify detection, investigation, or response practices for suspected or confirmed information technology security incidents if disclosure would facilitate unauthorized access to information technology resources. Reinstates exemption for meetings that would reveal exempt data and information. The Senate unanimously approved the bill.

SB 7006 OCSR/Campus Emergency Response

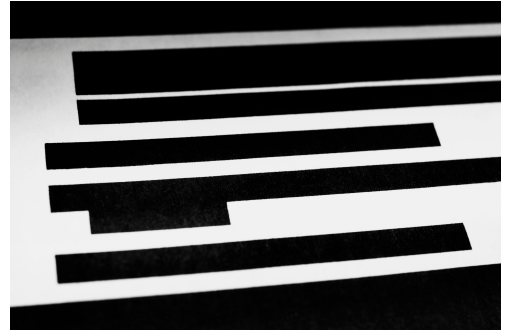
Reinstates exemption for campus emergency response plans and exemption for meetings that would reveal campus emergency response plans. The public necessity statement for the exemption stated that public access to emergency responses could hamper or disable a public institution's response to terrorism. However, universities and colleges cited the exemption to withhold information about COVID-19 response plans. The bill sponsor, Rep. Byron Donalds (R-Naples), explained that the exemption was not intended to withhold pandemic response plans and encouraged schools to release the plans. The Senate passed SB 7006, with four lawmakers voting no.

HOME ADDRESS

SB 1420 Public Records/County and City Attorneys

Danny Burgess (R-Zephyrhills)

Exempts the home address, telephone numbers, dates of birth, and photographs of current or former city and county attorneys. Exempts the names, photographs, and places of employment of children and spouses of local attorneys. The Senate Judiciary Committee unanimously approved SB 1420, and it is now in Community Affairs.



CORRECTIONS RECORDS

SB 7030 OCSR/Health Information of an Inmate

Reinstates exemption for protected health information of inmates and offenders held by the Department of Corrections and identity of any inmate or offender who has been tested for HIV and the test results. The Senate Criminal Justice Committee unanimously approved the measure.

HB 873 Pub. Rec./Execution Information

Patt Maney (R-Fort Walton Beach)

Exempts identifying information or information that could reasonably lead to identification of a person or entity participating in any aspect of an execution. FAF wrote to the sponsor, explaining that the exemption is based on unsupported hypotheticals and fails to state with necessity the reason for the exemption. The Criminal Justice & Public Safety Subcommittee unanimously approved HB 873, and it is now in the Government Operations Subcommittee.

LAW ENFORCEMENT RECORDS

SB 7032 OCSR/Criminal Intelligence Information or Criminal Investigative Information

Reinstates exemption for personal identifying information of a witness to a murder for two years. The Senate Criminal Justice Committee unanimously approved the committee bill.

598 Public Records/Criminal Conflict and Civil Regional Counsel Office

Dennis Baxley (R-Lady Lake)

SB 596, in part, authorizes an office of criminal conflict and civil regional counsel to register a license plate or decal under a fictitious name for counsel's use. SB 598 exempts records relating to the registration application for a license plate or decal issued under a fictitious name. The bill was unanimously approved by the Senate Appropriations Subcommittee on Criminal and Civil Justice.

AGENCY RECORDS

HB 617 Pub. Rec. and Meetings/Statewide Council on Human Trafficking Direct-support Organization

Toby Overdorf (R-Stuart)

Exempts and makes confidential any personal identifying information of a donor or prospective donor to End Human Trafficking, a direct-support organization (DSO) to the Statewide Council on Human Trafficking, who desires to remain anonymous. Exempts from Sunshine Law and

Administrative Procedures Act portions of meetings of End Human Trafficking at which personal identifying information of a donor or prospective donor is discussed. FAF has suggested an amendment to require closed meetings to occur on the record and require disclosure of meeting minutes upon a finding by a court that the meeting went beyond the stated purpose. However, Representative Overdorf told FAF that this would not be possible because a record of such meeting would violate *Americans for Prosperity v. Bonta*, in the which the U.S. Supreme Court struck down a California law requiring disclosure of major donors to a nonprofit organization. The Criminal Justice and Public Safety Subcommittee unanimously approved HB 617, and it is now in the Government Operations Subcommittee.

SB 1614 Public Records/Motor Vehicle Crashes/Traffic Citations

Gayle Harrell (R-Stuart)

Exempts and makes confidential crash reports that reveal the identity of parties involved in the crash. Permits, but does not require, an agency to release a summary report of crashes to media. Exempts traffic citations. Information in crash reports and traffic citations can be used to assess crash trends, infrastructure, and ticketing patterns. While this bill is intended to protect information covered by the Driver's Privacy Protection Act, the federal statute is not a general privacy protection measure. FAF suggested requiring disclosure of summary crash reports and requiring access to information for permissible uses under DPPA. The bill passed with 3 senators voting no.



HB 699 Pub. Rec./Homelessness Counts and Databases

Fiona McFarland (R-Sarasota)

Exempts and makes confidential individual identifying information of a person contained in a Point-in-Time Count or homeless management information system. Individual identifying information is defined as information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person. Information can be released in the aggregate if it does not disclose the individual identifying information of a person. The House Children, Families & Seniors Subcommittee unanimously voted in favor of the bill, and it is now in the Government Operations Subcommittee.

SB 7010 OGSR/Public and Professional Guardians

Reinstates exemption for records held by the Department of Elder Affairs about investigations into complaints filed with the Department. Exempts the names of complainant and ward involved; the ward's personal health and financial records; and photographs and videos related to the complaint or obtained during the investigation. Allows access by court order and allows release of information once the investigation is complete or no longer active. The Senate unanimously passed SB 7010.

SB 7016 OGSR/Information Submitted by Insurers/Department of Financial Services

Reinstates exemption for information relating to investigating and tracking insurance fraud submitted by insurers to the Department of Financial Services. The Senate unanimously passed the bill.

SB 7018 OGSR/Injured or Deceased Employee/Department of Financial Services

Reinstates exemption for personal identifying information of injured or deceased employees contained in records held by the Department of Financial Services for the administration of workers' compensation. "Personal identifying information" includes the employee's name, date of birth, home address, email address, and phone number. Data may be released in aggregate format without identifying information. The Senate approved the bill with zero no votes.

SB 7020 OGSR/Office of Insurance Regulation

Reinstates Fla. Stat. § 663.416(2), exempting personal identifying information of customer or prospective customer of an international trust entity appearing in the books of and records of an International Trust Company Representative Office ("ITCRO", an off-shore trust company with offices in Florida), and Fla. Stat. § 663.540(2), exempting personal identifying information of customers of an international trust entity appearing in the books of a qualified limited service affiliate held by the Office of Financial Regulation. Reinstates Fla. Stat. § 655.057(1), which exempts and makes confidential records and information relating to an investigation by OFR until the investigation is completed or ceases to be active. Reinstates exemption for reports of examinations, including working papers, prepared by the OFR or any state or federal agency responsible for regulating financial institutions. Reinstates exemption for confidential documents supplied to the OFR by other state or federal government agencies.

The staff analysis for OGSR notes that the OFR has never received requests for information made exempt by sections 663.416 and 663.540. Based on the OFR's statements, FAF recommended sunseting these two provisions of the statute. No public purpose is served by maintaining these exemptions. The Senate approved the bill with just two lawmakers voting against the measure.

HEALTH RECORDS

HB 7007/SB 7000 OGSR/Nonviable Birth Certificates

Reinstates public records exemption for information submitted to the Department of Health for issuance of nonviable fetus birth certificate. Exempts information relating to the cause of death and parentage of a nonviable fetus, marital status of such fetus' parent, and any medical information included in nonviable birth records held by a state agency. The Senate unanimously voted in favor of the bill. The House State Affairs Committee unanimously approved HB 7005.

HB 7005/SB 7002 OGSR/Information Relating to Medical Marijuana Held by the Department of Health

Reinstates public records exemption for patient's or caregiver's personal identifying information held by the Department of Health in the Medical Marijuana Use Registry. Exempts a qualified physician's DEA number, residential address, and ID card. Information may be released to law enforcement agencies and for research purposes. The Senate unanimously approved SB 7002. The House State Affairs Committee unanimously approved HB 7005.

COURT RECORDS

SB 7008 OGSR/Substance Abuse Impaired Persons

Reinstates exemption for Marchman Act petitions, court orders, and related records filed with a court. Exempts personal identifying information contained in such records published on a court docket. Allows access by court order upon a showing of good cause. The Senate passed the bill with no votes against it.