

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 07-06 OGSR Public Records Requests made by Law Enforcement Agencies
SPONSOR(S): Government Efficiency & Accountability Council and Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	10 Y, 0 N	Williamson	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

Current law provides a public records exemption for:

- A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency;
- The custodial agency's response to that public records request; and
- Any information that would identify the public record that was requested by the law enforcement agency or provided by the custodial agency.

The exemption applies for the period of time that the information is considered active criminal intelligence or criminal investigative information.

The bill reenacts the public records exemption and makes clarifying changes. The exemption will repeal on October 2, 2007, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

Requests Made by Law Enforcement Agencies

Current law provides a public records exemption for:

- A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency;
- The custodial agency's response to that public records request; and
- Any information that would identify the public record that was requested by the law enforcement agency or provided by the custodial agency.²

The exemption applies for the period of time that the information is considered active criminal intelligence information³ or active criminal investigative information.⁴ Once the investigation is no

¹ Section 119.15, F.S.

² Section 119.071(2)(c), F.S.

³ Section 119.011, F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Such information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it

longer active, the law enforcement agency must give notice to the custodial agency that the information is no longer protected and is available for public inspection and copying.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2007, unless reenacted by the Legislature.

2006 – 2007 Interim Review

During the 2006 – 2007 Interim, committee staff reviewed the exemption pursuant to the Open Government Sunset Review Act. Staff surveyed law enforcement agencies and custodial agencies to determine whether the exemption was utilized and if changes to the exemption were needed.

As part of the review, staff discovered that the exemption, as currently worded, has created some confusion; thus, it was recommended that the exemption be clarified.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes clarifying changes.

The bill clarifies that the exemption does not apply to the public record that is the subject of the public records request. The exemption only applies to the request, the custodial agency's response to that request, and any information that would identify whether a request had been made or received.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to remove the repeal date and to make clarifying changes.

Section 2 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

will lead to detection of ongoing or reasonably anticipated criminal activities, or while such information is directly related to pending prosecutions or appeals.

⁴ Section 119.011, F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Such information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future, or while such information is directly related to pending prosecutions or appeals.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.