

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-03 Public Record Exemption for E911 Recordings

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
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3)				
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SUMMARY ANALYSIS

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations. In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service currently is available in all 67 counties.

Current law provides a public record exemption for the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency. The exemption applies to such information in any record or recording, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency. The confidential and exempt information may be shared only with another public safety agency.

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency or by court order upon a showing of good cause. Further, this bill does not provide an express privilege from discovery for E911 recordings or identifying information contained in those recordings and transcripts. As such, recordings and identifying information are available through the discovery process. See DRAFTING ISSUES OR OTHER COMMENTS section for further details.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a public necessity statement as required by the State Constitution and it provides for retroactive application of the exemption.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

E911 System

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.³ In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911)

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of Management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.⁴

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).⁵

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.⁶ The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

E911 Board

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),⁷ which is the main funding source for 911 communications in the state.⁸ The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.⁹ With oversight by the department, the board administers the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

Boards of County Commissioners

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.¹⁰

Public Record Exemption for the E911 System

Current law provides that

⁴ Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

⁵ *Id.* at 2.

⁶ Section 365.171(4), F.S.

⁷ Section 365.172(5)(a), F.S.

⁸ The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

⁹ Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

¹⁰ Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies;*

Options Exist for Creating Minimum Standards, January 2010, at 2.

[a]ny record, recording, or information, or portions thereof, obtained by a public agency¹¹ or a public safety agency¹² for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt¹³ from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . .¹⁴

In short, the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.¹⁵

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, states have begun prohibiting the release of E911 recordings.

Protections in Other States

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request and the person requesting the transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.¹⁶

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for the purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.¹⁷

In Pennsylvania, “[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings” are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.¹⁸ South Dakota has similar protections and release standards as those in Pennsylvania.¹⁹

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.²⁰

¹¹ Section 365.171(3)(c), F.S., defines “public agency” to mean the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

¹² Section 365.171(3)(d), F.S., defines “public safety agency” to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁴ Section 365.171(12), F.S.

¹⁵ *Id.*

¹⁶ Minn. Stat. s. 13.82.

¹⁷ Miss. Code s. 19-5-319.

¹⁸ 65 P.S. s. 67.708.

¹⁹ S.D. Cod. Laws s. 1-27-1.5.

²⁰ R.I. Gen. Laws s. 39-21.1-17.

Effect of Bill

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency. In addition, the court may order release of the recording or information upon a showing of good cause.

The bill provides for retroactive application of the public record exemption.²¹ It also provides a public necessity statement as required by the State Constitution.²²

In accordance with the Open Government Sunset Review Act,²³ the exemption will sunset on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 365.171, F.S., to expand the current public record exemption to include the recording of an E911 call.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector will incur costs associated with this bill if a public records request is made for a transcript of a recording of a request for emergency services or report of an emergency through the

²¹ In 2001, the Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

²² Section 24(c), Art. I of the State Constitution.

²³ Section 119.15, F.S.

E911 system. The requestor will be responsible for paying the actual cost of transcribing the recording in addition to any other costs associated with the redaction of confidential and exempt information from the transcript.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on public agencies and public safety agencies, because staff responsible for complying with public records requests could require training related to the changes made to the current public record exemption. In addition, such agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of public agencies and public safety agencies.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Are Exempt Records Discoverable?²⁴

It has been held that an exemption from disclosure under the Public Records Act does not render a record automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure.²⁵ For example, in *B.B. v. Department of Children and Family Services*²⁶ the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure."²⁷

²⁴ Exert from the *Government-In-The-Sunshine Manual*, 2009 Edition, Volume 31, at 123.

²⁵ *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). *Cf.*, *State, Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984) ("Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.").

²⁶ 731 So. 2d 30 (Fla. 4th DCA 1999).

²⁷ *Id.* at 34. *And see State, Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So. 2d 1322 (Fla. 2d DCA 1990), *review denied*, 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). *Compare, Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce

However, in some cases, legislative confidentiality requirements provide an express privilege from discovery.²⁸ This bill does not provide an express privilege from discovery for E911 recordings or identifying information contained in those recordings and transcripts. As such, recordings and identifying information are available through the discovery process.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

²⁸ See, e.g., *Cruger v. Love*, 599 So. 2d 111 (Fla. 1992) (records of medical review committees are statutorily privileged from discovery). See also, *Department of Health v. Grinberg*, 795 So. 2d 1136 (Fla. 1st DCA 2001).

STORAGE NAME: pcb03a.GAP.doc
DATE: 3/6/2010

PAGE: 7