

CHAPTER 119

PUBLIC RECORDS

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119.01 General state policy on public records.—

(1) It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

(2) The Legislature finds that, given advancements in technology, providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, then such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(3) The Legislature finds that providing access to public records is a duty of each agency and that automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must ensure reasonable access to records electronically maintained.

(4) Each agency shall establish a program for the disposal of records that do not have sufficient legal, fiscal, administrative, or archival value in accordance with

retention schedules established by the records and information management program of the Division of Library and Information Services of the Department of State.

History.—s. 1, ch. 5942, 1909; RGS 424; CGL 490; s. 1, ch. 73-98; s. 2, ch. 75-225; s. 2, ch. 83-286; s. 4, ch. 86-163; ss. 1, 5, ch. 95-296.

119.011 Definitions.—For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means 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.

(b) "Criminal investigative information" means 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.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07(3)(f).

3. The time, date, and location of the incident and of the arrest.

4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.07(3)(f), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

The exemptions in this subparagraph are subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be 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.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections.

History.—s. 1, ch. 67-125; s. 2, ch. 73-98; s. 3, ch. 75-225; ss. 1, 2, ch. 79-187; s. 8, ch. 85-53; s. 1, ch. 88-188; s. 5, ch. 93-404; s. 5, ch. 93-405; s. 5, ch. 95-207; s. 6, ch. 95-296; s. 10, ch. 95-398.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

119.0115 Videotapes and video signals; exemption from chapter.—Any videotape or video signal which, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from this chapter.

History.—s. 1, ch. 80-1.

119.0112 Records made public by public fund use. If public funds are expended by an agency defined in s. 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business, and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, founda-

tion, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

History.—s. 3, ch. 75-225; s. 3, ch. 93-405.

119.02 Penalty.—A public officer who knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5842, 1909; RGS 425; CGL 491; s. 1, ch. 17173, 1935; CGL 1936 Supp. 7520(6); s. 73, ch. 71-136; s. 6, ch. 75-225; s. 4, ch. 84-298.

119.021 Custodian designated.—The elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee, shall be the custodian thereof.

History.—s. 2, ch. 67-125; s. 3, ch. 83-286; s. 753, ch. 95-147.

119.031 Keeping records in safe places; copying or repairing certified copies.—Insofar as practicable, custodians of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of such state agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

History.—s. 3, ch. 67-125; s. 4, ch. 83-286.

119.041 Destruction of records regulated.—

(1) Every public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the Division of Library and Information Services of the Department of State in accordance with s. 257.36.

(2) Agency orders that comprise final agency action and that must be indexed or listed pursuant to s. 120.53(2) have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules and guidelines of the Department of State.

History.—s. 4, ch. 67-125; ss. 10, 35, ch. 69-106; s. 5, ch. 83-286; s. 5, ch. 86-163; s. 1, ch. 91-30; s. 1, ch. 91-191.

119.05 Disposition of records at end of official's term.—Whoever has the custody of any public records shall, at the expiration of his or her term of office, deliver

to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State all records, books, writings, letters, and documents kept or received by him or her in the transaction of official business.

History.—s. 5, ch. 67-125; ss. 10, 35, ch. 69-106; s. 6, ch. 86-163; s. 754, ch. 95-147.

119.06 Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him or her. Any person unlawfully possessing public records shall upon demand of any person and within 10 days deliver such records to their lawful custodian unless just cause exists for failing to deliver such records.

History.—s. 6, ch. 67-125; s. 755, ch. 95-147.

119.07 Inspection, examination, and duplication of records; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8½ inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to \$1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technol-

ogy resources" shall have the same meaning as in s. 282.303(13).

(c) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. The supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(2)(a) A person who has custody of a public record and who asserts that an exemption provided in subsection (3) or in a general or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination. If the person who has custody of a public record contends that the record or part of it is exempt from inspection and examination, he or she shall state the basis of the exemption which he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute, and, if requested by the person seeking the right under this subsection to inspect, examine, or copy the record, he or she shall state in writing and with particularity the reasons for the conclusion that the record is exempt.

(b) In any civil action in which an exemption to subsection (1) is asserted, if the exemption is alleged to exist under or by virtue of paragraph (c), paragraph (d), paragraph (e), paragraph (k), paragraph (l), or paragraph (o) of subsection (3), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of paragraph (b) of subsection (3), an inspection in camera will be discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection, examination, or copying as requested by the person seeking such access.

(c) Even if an assertion is made by the custodian of a public record that a requested record is not a public record subject to public inspection and examination under subsection (1), the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request requesting the right to inspect, examine, or copy the record was served on or otherwise made to the custodian of the record by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian shall not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(d) The absence of a civil action instituted for the purpose stated in paragraph (c) will not relieve the custodian of the duty to maintain the record as a public record if the record is in fact a public record subject to pub-

lic inspection and examination under subsection (1) and will not otherwise excuse or exonerate the custodian from any unauthorized or unlawful disposition of such record.

(3)(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination shall have the right to review his or her own completed examination.

(b) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(c) Any information revealing the identity of a confidential informant or a confidential source is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(3), are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Department of Community Affairs as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(f) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of the crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827 and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 800, or chapter 827, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(g) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property

stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(h) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(i)1. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from the provisions of subsection (1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from subsection (1) and s. 24(a), Art. I of the State Constitution. The home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. These exemptions are subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

2. An agency that is the custodian of the personal information specified in subparagraph 1. and that is not

the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency.

(j) Any information provided to an agency of state government or to an agency of a political subdivision of the state for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(k) Any information revealing the substance of a confession of a person arrested is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(l)1. A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(m) Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.53(5)(a) or within 10 days after bid or proposal opening, whichever is earlier.

(n) When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption from the provisions of this chapter shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this paragraph, "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This paragraph shall have no application to other exemptions from the provisions of subsection (1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

(o) Data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software which is sensitive are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency. As used in this paragraph:

1. "Data processing software" has the same meaning as in s. 282.303(8).

2. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

a. Collect, process, store, and retrieve information which is exempt from the provisions of subsection (1);

b. Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

c. Control and direct access authorizations and security measures for automated systems.

(p) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services,

or the financing of housing are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This paragraph shall not be construed to modify or repeal any special or local act.

(q) All complaints and other records in the custody of any agency in the executive branch of state government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section.

(r) All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address, and telephone number of subscribers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(s) Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from the provisions of s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency which is authorized to have access to such documents by any

provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section.

(t) Any financial statement which an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(u) Where the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(v) Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

(w)1. If certified pursuant to subparagraph 2., an investigatory record of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Investigatory records are those records which are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General or by an agency inspector general, as named under the provisions of s. 112.3189, in the course of an investigation. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

2. The Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, may certify such investigatory records require an exemption to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. The certification shall specify the nature and purpose of the investigation and shall be kept with the exempt records and made public when the records are made public.

3. The provisions of this paragraph do not apply to whistle-blower investigations conducted pursuant to the provisions of ss. 112.3187, 112.3188, 112.3189, and 112.31895.

(x) The social security numbers of all current and former agency employees which numbers are contained in agency employment records are exempt from subsec-

tion (1) and exempt from s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term "agency" means an agency as defined in s. 119.011.

(y) The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. As used in this paragraph, "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. An audit becomes final when the audit report is presented to the unit of local government. Audit workpapers and notes related to such audit report are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the audit is completed and the audit report becomes final.

(4) The exemptions provided for by this section are subject to the Open Government Sunset Review Act in accordance with 1s. 119.14.

(5) Nothing in this section shall be construed to exempt from subsection (1) a public record which was made a part of a court file and which is not specifically closed by order of court, except as provided in paragraphs (c), (d), (e), (k), (l), and (o) of subsection (3) and except information or records which may reveal the identity of a person who is a victim of a sexual offense as provided in paragraph (f) of subsection (3).

(6) An exemption from this section does not imply an exemption from or exception to s. 286.011. The exemption from or exception to s. 286.011 must be expressly provided.

(7) Nothing in subsection (3) or any other general or special law shall limit the access of the Auditor General or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such auditor states in writing that such records are needed for a properly authorized audit or investigation. Such auditor shall maintain the confidentiality of any public records that are confidential or exempt from the provisions of subsection (1) and shall be subject to the same penalties as the custodians of those public records for violating confidentiality.

(8)(a) Any person or organization, including the Department of Health and Rehabilitative Services, may petition the court for an order making public the records of the Department of Health and Rehabilitative Services that pertain to investigations of alleged abuse, neglect, abandonment, or exploitation of a child, a disabled adult, or an elderly person. The court shall determine if good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interest of the disabled adult, elderly person, or child who is the focus of the investigation, and in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the

actions of the Department of Health and Rehabilitative Services and the court system in providing disabled adults, elderly persons, and children of this state with the protections enumerated in ss. 415.101 and 415.502. However, nothing in this subsection shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting the abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(b)1. In cases involving the death of a disabled adult or an elderly person as the result of abuse, neglect, or exploitation, there shall be a presumption that the best interest of the disabled adult or elderly person and the public interest will be served by full public disclosure of the circumstances of the investigation of the death and any other investigation concerning the disabled adult or elderly person.

2. In cases involving the death of a child as the result of abuse, neglect, or abandonment, there shall be a presumption that the best interest of the child and the child's siblings and the public interest will be served by full public disclosure of the circumstances of the investigation of the death of the child and any other investigation concerning the child and the child's siblings.

(c) In cases involving serious bodily injury to a child, a disabled adult or an elderly person, the Department of Health and Rehabilitative Services may petition the court for an order for the immediate public release of records of the department which pertain to the investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who suffered serious bodily injury. The petition must be personally served upon the child, disabled adult, or elderly person, the child's parents or guardian, the legal guardian of that person, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, abandonment, or exploitation. The court must determine if good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, from the date the department filed the petition with the court. If the court has neither granted nor denied the petition within the 24-hour time period, the department may release to the public summary information including:

1. A confirmation that an investigation has been conducted concerning the alleged victim.

2. The dates and brief description of procedural activities undertaken during the department's investigation.

3. The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceedings, and the rulings of the court.

The summary information may not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the disabled adult or elderly person or child who is the focus of the investigation and, in the case of the child, the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public inter-

est for access to public records. However, nothing in this paragraph shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(d) In cases involving the death of a child or a disabled adult or an elderly person, the Department of Health and Rehabilitative Services may petition the court for an order for the immediate public release of records of the department which pertain to the investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who died. The department must personally serve the petition upon the child's parents or guardian, the legal guardian of the disabled adult or elderly person, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, abandonment, or exploitation. The court must determine if good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, from the date the department filed the petition with the court. If the court has neither granted nor denied the petition within the 24-hour time period, the department may release to the public summary information including:

1. A confirmation that an investigation has been conducted concerning the alleged victim.

2. The dates and brief description of procedural activities undertaken during the department's investigation.

3. The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceedings, and the ruling of the court.

In making a determination to release confidential information, the court shall balance the best interests of the disabled adult or elderly person or child who is the focus of the investigation and, in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. However, nothing in this paragraph shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(e) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any unfounded report or proposed confirmed report or report closed without classification, or in any report that has not yet been classified pursuant to s. 415.1045(7) or ²s. 415.504(4), until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or abandonment.

(9) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution.

History.—s. 7, ch. 67-125; s. 4, ch. 75-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187; s. 2, ch. 80-273; s. 1, ch. 81-245; s. 1, ch. 82-95; s. 36, ch. 82-243; s. 6, ch. 83-215; s. 2, ch. 83-269;

s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-73; s. 1, ch. 85-86; s. 7, ch. 85-152; s. 1, ch. 85-177; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 87-399; s. 2, ch. 88-189; s. 1, ch. 88-384; s. 1, ch. 89-29; s. 7, ch. 89-55; s. 1, ch. 89-80; s. 1, ch. 89-275; s. 2, ch. 89-283; s. 2, ch. 89-350; s. 1, ch. 89-531; s. 1, ch. 90-43; s. 63, ch. 90-136; s. 2, ch. 90-196; s. 4, ch. 90-211; s. 24, ch. 90-306; ss. 22, 26, ch. 90-344; s. 116, ch. 90-360; s. 78, ch. 91-45; s. 11, ch. 91-57; s. 1, ch. 91-71; s. 1, ch. 91-96; s. 1, ch. 91-130; s. 1, ch. 91-149; s. 1, ch. 91-219; s. 1, ch. 91-288; ss. 43, 45, ch. 92-58; s. 90, ch. 92-152; s. 59, ch. 92-289; s. 217, ch. 92-303; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 4, ch. 94-73; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 67, ch. 94-164; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, ch. 95-398; s. 1, ch. 95-399; s. 121, ch. 95-418.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

Note.—As amended by s. 44, ch. 95-228, s. 415.504(4) no longer refers to classification of offenses. As amended by s. 133, ch. 95-418, s. 415.504(4) continues to refer to classification of offenses.

Note.—Additional exemptions from the application of this section are indexed in Volume 5 of this edition in the General Index under the heading "Public Records."

119.072 Criminal intelligence or investigative information obtained from out-of-state agencies.—Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

History.—s. 3, ch. 79-187.

119.08 Photographing public records.—

(1)(a) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his or her authorized deputy.

(b) This section applies to the making of photographs in the conventional sense by utilization of a camera device to capture images of documents, paper, books, receipts, paper photographs, and other similar media and excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work

hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

History.—s. 8, ch. 67-125; s. 1, ch. 89-57; s. 756, ch. 95-147.

119.083 Definitions; copyright of data processing software created by governmental agencies; fees; prohibited contracts.—

(1) As used in this section:

(a) "Agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(b) "Data processing software" has the same meaning as in s. 282.303.

(c) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(2) Any agency is authorized to hold copyrights for data processing software created by the agency and to enforce its rights pertaining to such copyrights, provided that the agency complies with the requirements of this section.

(a) Any agency that has obtained a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any other public or private entity and may establish a license fee for the use of such data processing software. Proceeds from the sale or licensing of copyrighted data processing software may be deposited by a state agency into an agency trust fund. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used. Prices or fees for the sale or licensing of copyrighted data processing software may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to data or information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(1).

(b) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to hold or obtain copyrights.

(3) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(4) An agency must consider when designing or acquiring an electronic recordkeeping system that such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(5) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming must be in accordance with s. 119.07(1)(b).

(6) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency.

History.—ss. 1, 2, ch. 90-237; s. 3, ch. 93-405; s. 4, ch. 94-340; s. 7, ch. 95-296.

Note.—Expires October 1, 2000, pursuant to s. 2, ch. 90-237, and is scheduled for review by the Legislature.

119.085 Remote electronic access to public records.—

As an additional means of inspecting, examining, and copying public records of the executive branch, judicial branch, or any political subdivision of the state, public records custodians may provide access to the records by remote electronic means. Unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of s. 119.07(1). The custodian shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which by general or special law are exempt from s. 119.07(1).

History.—s. 2, ch. 85-86; s. 1, ch. 90-94; s. 2, ch. 95-296.

119.09 Assistance of the Division of Library and Information Services, records and information management program, of the Department of State.—

The Division of Library and Information Services, records and information management program, of the Department of State shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make space available in its records center for the filing of semicurrent records so scheduled

and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

History.—s. 9, ch. 67-125; ss. 10, 35, ch. 69-106; s. 6, ch. 83-286; s. 7, ch. 86-163.

119.092 Registration by federal employer's registration number.—Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

History.—s. 1, ch. 77-148.

119.10 Violation of chapter; penalties.—

(1) Any public officer who violates any provision of this chapter is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(2) Any person willfully and knowingly violating any of the provisions of this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 67-125; s. 74, ch. 71-136; s. 5, ch. 85-301.

119.105 Protection of victims of crimes or accidents.—Police reports are public records except as otherwise made exempt or confidential by general or special law. Every person is allowed to examine nonexempt or nonconfidential police reports. No person who inspects or copies police reports for the purpose of obtaining the names and addresses of the victims of crimes or accidents shall use any information contained therein for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents. Nothing herein shall prohibit the publication of such information by any news media or the use of such information for any other data collection or analysis purposes.

History.—s. 1, ch. 90-280.

119.11 Accelerated hearing; immediate compliance.—

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

History.—s. 5, ch. 75-225; s. 2, ch. 83-214; s. 6, ch. 84-298.

119.12 Attorney's fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such agency.

History.—s. 5, ch. 75-225; s. 7, ch. 84-298.

119.15 Legislative review of exemptions from public meeting and public records requirements.—

(1) This section may be cited as the "Open Government Sunset Review Act of 1995."

(2) This section provides for the automatic application of the policy of open government as provided in ss. 119.01 and 286.011 to certain exemptions from ss. 119.07(1) and 286.011. It is the intent of the Legislature that exemptions to ss. 119.07(1) and 286.011 shall be created or maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Thus, the maintenance or creation of an exemption must be compelled as measured by these criteria. Further, the Legislature finds that the public has a right to have access to executive branch governmental meetings and records unless the criteria in this section for restricting such access to a public meeting or public record are met and the criteria are considered during legislative review in connection with the particular exemption to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the Legislature shall consider the criteria in this section before enacting future exemptions.

(3)(a) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption. A law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(d) In the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Joint Legislative Management Committee shall certify to the President of the Senate and the Speaker of the House of Representatives, by June 1, the language and statutory citation of each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in this section. Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(e) The term "exemption" means a provision of the Florida Statutes which creates an exception to s. 119.07(1) or s. 286.011 and which applies to the executive branch of state government or to local government, but it does not include any provision of a special law or local law.

(f) An exemption that is required by federal law is not subject to repeal under this section.

(g) An exemption that applies solely to the Legislature or the State Court System is not subject to repeal under this section.

(4)(a) The Legislature shall review the exemption before its scheduled repeal and consider as part of the review process the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or

discussed in the meeting be readily obtained by alternative means? If so, how?

(b) An exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(c) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (b)2. or subparagraph (b)3. would occur if the records were made public.

(d) An exemption that is created or revived and reenacted must contain uniform language that clearly states the section in the Florida Statutes from which it is exempt, s. 119.07(1) or s. 286.011. The uniform language must also provide for the maximum public access to the meetings and records as is consistent with the purpose of the exemption. An exemption that is created or substantially amended must state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled date of repeal.

(e) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217.