

DRAFT #3 *
POTENTIAL RECOMMENDATIONS
MADE TO OR BY THE COMMISSION

(For consideration by the Commission at its August 2008 meeting)

A. EXEMPTIONS

1) Definitions: Exempt v. Exempt & Confidential

> Amend ch. 119 to include a statutory definition of the terms “exempt” and “exempt and confidential”.

2) Redundancy

> Review all exemptions to ch. 119 for redundant exemptions; create universal exemptions in ch. 119 where possible and/or appropriate. Redundant exemptions identified:

1. audit reports
2. social security numbers
3. identity of donors
4. medical information/records
5. personal financial information
6. trade secrets
7. proprietary business information
8. security system plans, etc.
9. claims files
10. appraisals, offers, counteroffers
11. complaints re: discrimination

3) Sunset Review

> Amend the current sunset review process to require periodic review of all newly created exemptions to the PRL and SL. Suggestion: Once 5 years after enactment and then every 10 years thereafter.

4) Licensed Professionals: DBPR & DOH

> Amend the exemptions for investigations into complaints against professionals licensed by DBPR and DOH to stipulate that such records become public once the investigation is complete or no longer active.

5) Economic Development exemptions

> Amend EDA exemptions to allow for greater public access and oversight. (FAF amendment?)

6) Social Security Numbers

> Amend the SSN exemption in ch. 119 so that all SSNs are treated the same – a general exemption that allows access by commercial entities engaged in legitimate commercial purpose.

> IN THE ALTERNATIVE (?): Create a statewide unique identifier system; unique identifiers would be subject to public disclosure; SSNs would be exempt from disclosure w/o any exceptions.

7) Clemency

> Amend statutes re: clemency proceedings to allow greater public access and oversight. (Question: Do we codify the Gov’s policy that allows access to the clemency report by the petitioner – OR – do we expand the policy to allow public access to the clemency report.)

8) DCFS Exemptions

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- > Amend ch. 39 to allow foster children access to their own records.
- > Amend ch. 39 to allow the Secretary greater authority to release exempt department records under certain conditions and upon appropriate findings. (CS/HB 1467 and CS/SB 2762 – Senate version is the preferred.)

- > IN THE ALTERNATIVE: Endorse new DCFS language.

9) Law Enforcement exemptions

- > Amend exemptions for pre- and post-sentencing investigations to allow access to records once investigation is complete or no longer active.
- > Amend address exemption to clarify that such info is not exempt when a law enforcement officer (and other protected classes of employees) is a convicted sex offender.
- > Create an exception to the autopsy photo exemption that would allow limited but justifiable disclosure of the exempt records for legitimate investigative, training, or medical examiner purposes. (FDLE)
- > Amend the current exemption for non-Florida information to promote the sharing of information from non-Florida agencies and private entities with Florida public agencies. (FDLE)
- > Create an exemption for information submitted to FDLE and DBPR with regard to slot machine operations at pari-mutuels. (FDLE)
- > Create an exemption for specific personal information submitted to FDLE for purposes of subscribing to email notifications regarding location of registered sex offenders.

10) Barriers to Employment (SB 2152)

- > Amend statutes to allow greater protection of juvenile criminal history records to facilitate employment.

11) Litigation and Attorney Work-Product exemptions

- > Expand the litigation exemption under s. 286.011(8).
- > Expand the attorney work-product exemption under ch. 119.

12) Names of Retirees

- > Amend the exemption under ch. 121 for names and lists of retirees to allow for greater public access and oversight.

13) Consistency of Language

- > Recommend that the Legislature conduct a thorough review of all open government exemptions for consistency and modernity of language, bringing all exemptions within the current constitutional standard. (Second Year)

B. FEES

- > Amend the current fee provision to:
 1. retain the current 15 cents/page and other statutory fee provisions;
 2. delete the extensive use provision;
 3. stipulate that records in any form or format maintained by an agency must be provided for the actual cost of duplication;
 4. allow agencies to negotiate a fee for an “electronic service or product” (to be defined); and
 5. prohibit an agency from passing on the cost of redacting exempt information.

C. ELECTRONIC ACCESS

1) Standards for databases & data dictionaries

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> Create standards for creation of agency databases and data dictionaries in order to facilitate public access to electronic records.

2) Unique Identifiers/Social Security Numbers

> Create a statewide unique identifier system; unique identifiers would be subject to public disclosure; SSNs would be exempt from disclosure w/o any exceptions.

[See A 6), above]

3) Redaction

> Require agencies to develop electronic recordkeeping systems with redaction capability or, in the alternative, to use redaction software capable of deleting information that is exempt from public disclosure.

4) E-Mail Access

> Require agencies to provide public access to all public record e-mail through the use of public access terminals and/or websites.

5) Use of Personal Computers/Internet Accounts to Conduct Public Business

> Clarify that the use of personal computers and/or personal internet accounts to conduct public business does not alter the public's right of access to the records maintained on such computers or transmitted via such accounts.

> Clarify that all public records maintained on personal computers or transmitted via personal internet accounts are subject to current disclosure and retention requirements.

6) Emerging Technologies; Text Messages; Instant Messages

> Clarify that all text and instant messages relating to public business are public records subject to disclosure and retention requirements.

> Amend the sunshine law to prohibit the use of text and instant messaging technologies during public meetings and/or hearings.

> Amend law to allow agencies to meet via remote means under certain specified conditions.

D. FINANCIAL TRANSPARENCY

> Require all agencies to provide internet access to all contracts over a certain dollar amount and certain information related to such contracts. (HB 181/SB 392)

E. PUBLIC PARTICIPATION

> Require all agencies to allow for public participation at any meeting subject to the sunshine law. (HB 991 – vox populi: Get FAF version; J'ville City Ordinance)

F. EDUCATION AND TRAINING

> Require all government employees to undergo education and training on the requirements of Florida's open government laws.

> IN THE ALTERNATIVE: Require all elected and appointed government officials to undergo education and training on the requirements of Florida's open government laws.

G. ENFORCEMENT AND COMPLIANCE

> Require all agencies to seek approval from the Office of Open Government before denying a request for public records (IN THE ALTERNATIVE: the Attorney General).

> Amend penalty provisions to allow for additional fees to be assessed against an agency if a court determines that the agency (1) violated either the sunshine or public record law; and (2) showed intentional disregard for the public's constitutional right of access under

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Art. I, s. 24, Fla. Con.; or (3) the court finds a pattern of abuse of access requirements by the agency, stipulating that such fees will be deposited with the Office of Open Government for the purpose of enhancing access to public meetings and public records.

H. OFFICE OF OPEN GOVERNMENT

- > Codify the Office of Open Government within the Governor's Office with the stipulation that such placement be reviewed in five years (with a suggestion that the Office be made a cabinet-level agency?)
- > Expand the authority of the Office of Open Government to include all agencies, including local governments. (SB 2008)
- > Consolidate all open government initiatives by transferring authority to operate the open government mediation program from the Attorney General's Office to the Office of Open Government.

I. CITIZEN RIGHTS

- > Consolidate the sunshine law and public records law into one chapter of the Florida Statutes to allow for consistency of definitions, training requirements, enforcement, compliance, etc.
- > Codify the Citizen's Bill of Rights.
- > Enact a Fair Information Practices act to allow for greater data protection and integrity.

J. LEGISLATURE

- > Recommend that the House and Senate adopt rules regarding access to legislative records in compliance with general policies under ch. 119.
- > Amend Art. III, s. 4(e), Fla. Con. to allow for greater public access to legislative meetings (requires joint resolution).

*List of potential recommendations subject to change.