



The Florida Senate

Interim Project Report 2001-047

November 2000

Committee on Transportation

Senator Daniel Webster, Chairman

PUBLIC RECORD EXEMPTION FOR PRE-PAYMENT OF TOLL INFORMATION

SUMMARY

The information collected for an electronic toll collection system account includes the driver's name, address, home and work telephone numbers, driver's license number, credit card account number, and vehicle identification information. Further, other information such as individual travel patterns and routes could be derived from information currently collected by the Department of Transportation (DOT) and the expressway authorities. The 1996 Legislature found this information sensitive, and the protection of Floridians privacy and safety to be of critical state concern.

The exemption provided for personal identifying information provided to DOT, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges continues to be sufficiently compelling to override the strong public policy of open government.

BACKGROUND

The Public Records Law, chapter 119, F.S., requires records which are maintained by a public agency in the course of its statutory responsibilities be open and accessible to the public. The chapter authorizes the creation of an exemption to this requirement by general law if certain procedural requirements are met. However, such exemption to the Public Records Law is subject to automatic repeal by the Legislature unless a determination is made that the exception provides an identifiable public purpose sufficiently compelling to override the strong public policy of an open government.

Section 119.07, F.S., requires every person who has custody of a public record must permit such record to be inspected or examined by any person wishing to do so, unless such record is specifically exempted.

Section 119.07(3), F.S., contains several specific exemptions from the public access requirements of the

Public Records Law. For example, that section of law exempts any financial statement an agency requires of a prospective bidder in order to pre-qualify for a public road project or other public works project. The same section of law contains many other exemptions, as well, for criminal justice information, rideshare records, agency employee social security numbers and other personal information, among many other exemptions.

Section 24(a), Article I of the Florida State Constitution provides every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or made specifically confidential by the Constitution.

Chapter 338, F.S., addresses the Florida Intrastate Highway System and toll facilities. The law authorizes the DOT, expressway authorities and other similar agencies, to construct roads and to collect tolls to pay for the construction and maintenance of those roads.

Section 338.155(6), F.S., provides personal identifying information provided to, acquired by, or in the possession of the DOT, a county, or an expressway authority for the purpose of using a credit card, charge card or check for the prepayment of electronic toll facilities charges to the DOT, a county, or an expressway authority is exempt from s. 119.07, F.S., and s. 24 (a), Art. I of the State Constitution. The subsection further provides the exemption will be repealed effective October 1, 2001, unless otherwise reviewed and reenacted by the Legislature.

Chapter 348, F.S., authorizes the creation of expressway and bridge authorities in the state.

In FY 1994-95, the Orlando-Orange County Expressway Authority began using a transponder, mounted on the front of user cars, to facilitate passage through Orange County toll facilities. The transponder, popularly referred

to as the *E-Pass*, allows drivers to establish a prepaid toll account, either with a check or credit card. As the driver passes through the designated tollgate, the transponder makes electronic contact with a receiver in the toll lane. Immediately, the amount of the toll is subtracted from the prepaid *E-Pass* account.

There is a \$30 deposit required of *E-Pass* users who pay by check. If an *E-Pass* account is prepaid by credit card, there is no deposit. The *E-Pass* application includes the driver's name, address, home and work telephone numbers, driver's license number, credit card account number, and vehicle identification information.

According to DOT, there are 153 toll plazas operated by the department throughout the state, along with an additional 51 plazas operated by the Orlando-Orange County Expressway Authority. The DOT electronic toll collection system, known as SUNPASS is also utilized by other expressway authorities such as the Tampa-Hillsborough County Expressway Authority and the Miami-Dade County Expressway Authority. SUNPASS users are required to purchase the transponder for \$25, and DOT has sold approximately 250,000 transponders.

The Orlando-Orange County Expressway Authority plans to begin selling *E-Pass* transponders instead of accepting a deposit effective January 1, 2001.

METHODOLOGY

To complete this review staff questioned interested parties concerning the use and need for the exemption, and reviewed the history of the public records exemption.

FINDINGS

The information collected for an electronic toll collection system account includes the driver's name, address, home and work telephone numbers, driver's license number, credit card account number, and vehicle identification information. Further, other information such as individual travel patterns and routes could be derived from information currently collected by DOT and the expressway authorities. The 1996 Legislature found this information sensitive, and the protection of Floridians privacy and safety to be of critical state concern.

The exemption provided for personal identifying information provided to DOT, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges continues to be sufficiently compelling to override the strong public policy of open government.

RECOMMENDATIONS

Staff finds the exemption provided for personal identifying information provided to DOT, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges continues to be sufficiently compelling to override the strong public policy of open government.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

N/A