



The Florida Senate

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Committee on Agriculture and Consumer Services

Senator James E. "Jim" King, Jr., President

OPEN GOVERNMENT SUNSET REVIEW OF A PUBLIC RECORDS EXEMPTION FOR ANY INFORMATION CONTAINED IN A RABIES VACCINATION CERTIFICATE PROVIDED TO AN ANIMAL CONTROL AUTHORITY WHICH IDENTIFIES THE OWNER OF THE ANIMAL VACCINATED (SECTION 828.30(5), FLORIDA STATUTES)

SUMMARY

The Open Government Sunset Review Act provides for the automatic repeal of an exemption to the requirements of open government five years after it is initially enacted unless it is reviewed and reenacted by the Legislature. The act establishes a process for identifying those exemptions that are subject to review in a particular year, as well as provides the standard of review for the exemptions that are subject to review.

Subsection 828.30(5), F.S., was identified by The Division of Statutory Revision as being subject to review during the interim and, unless the Legislature reenacts it, it will be repealed on October 2, 2003. Section 828.30, F.S., requires that all dogs, cats, and ferrets four months of age or older must be vaccinated by a licensed veterinarian against rabies. (However, if a veterinarian certifies that the vaccination would endanger the animal's life, the vaccination may be postponed until its health permits.)

Requiring a veterinarian to provide a rabies vaccination certificate to the animal control authority places otherwise private practice (business) information such as name, address, and phone number of the animal owner into the public domain.

Maintaining the limited exemption pertaining to certain information contained in a rabies vaccination certificate, meets the criteria for exemption as set forth under s. 119.15(4)(b)3., F.S., while providing for public access to the information. Protection of information of a confidential nature concerning (business) entities specifically includes "a 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". This report recommends that the limited exemption be reenacted.

BACKGROUND

Florida has a long history of providing public access to the records of governmental and other public entities. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies. Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967. The act has been amended numerous times since its enactment.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

- (a) Every person has the right to inspect or copy any public records 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 specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission,

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or entity created pursuant to law or this Constitution.

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.

The State Constitution, the Public Records Law, and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution. Section 119.07(1)(a), F.S., requires:

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 Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. The term “public record” is broadly defined to mean:

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.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

The Legislature is expressly authorized to create exemptions to public records requirements. Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity

the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government.” The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.

Exemptions to open government requirements are subjected to a review and repeal process five years after their initial enactment. An exemption also may be subjected to this automatic review and repeal process if it has been “substantially amended.” An exemption has been substantially amended under the act if it “. . . expands the scope of the exemption to include more records or information or to include meetings as well as records.”

The Open Government Sunset Review Act of 1995 establishes a process for identifying those exemptions that are subject to review, as well as provides the standard that an exemption must meet to be recommended for reenactment.

Under the act, by June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House, the language and statutory citation of each exemption scheduled for repeal the following year. If the division does not include an exemption on the certified list that should have been included that exemption “. . . is not subject to legislative review and repeal under this section.”

If the division later determines that an exemption should have been certified, it “. . . shall include the exemption in the following year’s certification after that determination.”

As part of the review process, the Legislature is to consider:

- (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?

Under s. 119.15(4)(b), F.S., an exemption may be created or expanded *only if* it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three specified criteria, one of which must be met by the exemption, are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

While the standards in the Open Government Sunset Review Act appear to limit the Legislature in the process of review of exemptions, one session of the Legislature cannot bind another. The Legislature is only limited in its review process by constitutional requirements. In other words, if an exemption does not explicitly meet the requirements of the act, but falls within constitutional requirements, the Legislature cannot be bound by the terms of the Open Government Sunset Review Act. Further, s.119.15(4)(e), F.S., makes explicit that

... 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.

The Language of s. 828.30(5), F.S., relating to rabies vaccination certificates passed the Legislature as House Bill 1139, and subsequently became Chapter 98-213, Laws of Florida. It provides for any information contained in a rabies vaccination certificate, provided to an animal control authority that would identify the owner of a vaccinated animal, to be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as open records. However, certain exceptions to the exemption are allowed, such as information can be provided to the physician of, or, any person who has been bitten, scratched, or otherwise exposed to a zoonotic disease (a disease that can be transmitted to a human from an animal). Additional exceptions are provided for any person with an animal's tag number. These individuals may receive vaccination certificate information with regard to that particular animal, as can federal, state, and local law enforcement as well as prosecutorial agencies, other animal control authorities, emergency and medical response, disease control, or other governmental health agencies. This information is provided in order to control the transmission of rabies. Additionally, anyone who makes a written request may see or copy an individual certificate, or a copy of a database may be obtained if the animal owner's name, street address, phone number, and the animal tag number is not included.

This exemption to certain public information was provided after a finding of the following by the Legislature, as written in Section 2 of House Bill 1139: "[T]here is a public necessity to compile information contained in rabies vaccination certificates and to readily provide such information when necessary to promote public health, safety, and welfare. However, the Legislature also finds that such information is both confidential to the pet owner and proprietary for the veterinarian and should be distributed only when the public health, safety, and welfare demand. Rabies certificates include personal information about individual pet owners which, when compiled, can be used to produce the client list of each veterinarian who has complied with the provisions of s. 828.30, F.S., which requires the filing of a copy of rabies vaccination certificates with the local animal control authority. Such lists are trade secrets as defined by s.812.081, F.S. The Legislature finds that it is a public necessity that trade secret information be expressly made

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confidential and exempt from public records law because it is a felony to disclose such records. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets. Release of such information for reasons outside the scope of public health, safety, and welfare unnecessarily jeopardizes the right to privacy of pet owners who have their pets vaccinated and, further, negatively impacts veterinarians submitting rabies vaccination certificates by making the identities of their clients readily available to competing business interests. In addition, release of the information contained in a rabies vaccination certificate could subject pet owners to possible theft or harassment by individuals who target particular breeds, as well as to solicitations, including solicitations from competing veterinary business interests. Owners could become reluctant to have their pets vaccinated against rabies. Any decrease in the number of dogs and cats vaccinated against rabies would hinder the ability of animal control authorities to protect the public against the spread of rabies and endanger the public health, safety and welfare.”

METHODOLOGY

Committee staff reviewed the legislative history of s. 828.30(5), F.S. The exemption under review was examined pursuant to the criteria of the Open Government Sunset Review Act.

Interviews and discussions were held with animal control authority representatives, licensed veterinarian representatives, and representatives of The First Amendment Foundation.

FINDINGS

Section 828.30, F.S., requires that all dogs, cats, and ferrets four months of age or older must be vaccinated by a licensed veterinarian against rabies. (However, if a veterinarian certifies that the vaccination would endanger the animal's life, the vaccination may be postponed until its health permits.)

The statute also requires the veterinarian to provide a copy of the rabies vaccination certificate to the animal's owner and to the animal control authority. The rabies vaccination certificate must contain at least the following information:

- License number of the administering veterinarian
- Name, address, and phone number of the veterinarian and owner

- Date of vaccination
- Expiration date of the vaccination
- Species, age, sex, color, breed, weight, and name of the animal vaccinated
- Rabies vaccine manufacturer
- Vaccine lot number and expiration date
- Type and brand of vaccine used
- Route of administration of the vaccine
- Signature or signature stamp of the licensed veterinarian

The statutory requirement that veterinarians must provide a rabies vaccination certificate to the animal control authority places the information into the public domain.

Maintaining the limited exemption pertaining to certain information contained in a rabies vaccination certificate, meets the criteria for exemption as set forth under s. 119.15(4)(b)3., F.S., while providing for public access to the information. Specifically, the exemption allows animal control authorities throughout the state to effectively and efficiently administer the governmental program of keeping records of rabies vaccination of animals. Absent the exemption it is anticipated that there would be a significant reduction in compliance with the statutory requirement to provide the certificate to the animal control authority by veterinarians who would view the required submission as an unfair invasion of their practice (business) records and livelihood. Having these records reported to animal control authorities allows for efficient determination of an animal's vaccination status by human health care personnel, animal control personnel, and law enforcement personnel.

The limited exemption for rabies vaccination certificates provided to an animal control authority protects proprietary business information of private veterinary practices (businesses) in the state. Those practices that have compiled the information use it to further their business advantage over those who do not know it and the disclosure of that private practice information would undoubtedly injure the affected practice in the market place.

The client list is a significant part of a veterinarian's practice value, which should not be diminished by a statutory requirement to place the records in the public domain. Without the exemption competitors could easily obtain practice (business) information from an animal control authority and essentially steal a

veterinary practice away. Ultimately, the removal of the limited exemption from public records for rabies vaccination certificates provided to animal control authorities would cause a reduction in public health, safety, and animal welfare.

RECOMMENDATIONS

Staff recommends that s. 828.30(5), F.S., be reenacted to continue the limited exemption for any information contained in a rabies vaccination certificate provided to an animal control authority which identifies the owner of the animal vaccinated.