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Committee on Commerce and Consumer Services

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

OPEN GOVERNMENT SUNSET REVIEW OF THE PUBLIC RECORDS EXEMPTION FOR THE INDIVIDUAL RECORDS OF CHILDREN ENROLLED IN SCHOOL READINESS PROGRAMS, S. 411.011, F.S.

SUMMARY

The individual records of children enrolled in school readiness programs are confidential and exempt from the state's open government requirements. This public records exemption, codified in s. 411.011, F.S., expires on October 2, 2005, unless the Legislature reenacts the exemption after reviewing it under the Open Government Sunset Review Act.

Evaluating this exemption against the criteria prescribed in the act, this report finds that these school readiness records contain sensitive personal information about the children enrolled in school readiness programs and finds that the public release of this information would invade the privacy of these children and jeopardize their safety. The exemption, however, is unclear whether all or part of these school readiness records are confidential and whether the school readiness records held in the possession of a central agency or other contractor of a school readiness coalition are protected. Therefore, this report recommends that the Legislature maintain the exemption but consider revising it to clarify the exemption's coverage.

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 specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

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.

BACKGROUND

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."²

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from

¹ Chapter 119, F.S.

² *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995³ establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. 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.”⁴

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

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

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects 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.”

- The exemption “[p]rotects 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.”⁵

State-Funded Early Childhood Education and Child Care Programs

Before 1999, Florida’s state-funded early childhood education and child care programs were delivered through various independent programs, with administration of the programs divided principally between the Department of Education (DOE) and the Department of Children and Family Services (DCF):

- DOE formerly administered early childhood education programs, including the prekindergarten early intervention program; the Florida First Start Program; the migrant education program; and the federal Even Start Family Literacy Programs.
- DCF formerly administered the subsidized child care program, which funded child care services for at-risk and economically disadvantaged children younger than 13 years of age.

School Readiness Programs

In 1999, the Legislature enacted the School Readiness Act,⁶ which consolidated the state’s early childhood education and child care programs into one integrated program of school readiness services.⁷ The act directed that school readiness programs would be administered by local school readiness coalitions at the county or multicounty level and would be coordinated by the Florida Partnership for School Readiness at the state level.

School readiness programs must contain, at a minimum, the following elements: developmentally appropriate curriculum, a character development program, an age-appropriate assessment of each child’s development, a pretest and posttest administered as children enter and leave the programs, an appropriate staff-to-children ratio, a healthful and safe

³ Section 119.15, F.S.

⁴ Section 119.15(3)(b), F.S.

⁵ Section 119.15(4)(b), F.S.

⁶ Section 411.01, F.S.

⁷ Chapter 99-357, L.O.F.

environment, and a resource and referral network that assists parents in making an informed choice of child care providers.⁸

School readiness programs are funded through a mixture of state and federal funds. The combined budget of the system is approximately \$672.2 million, comprised of \$379.7 million from the federal Child Care and Development Fund (CCDF) block grant; \$112.5 million from the federal Temporary Assistance for Needy Families (TANF) block grant; \$177.9 million from the state's General Revenue Fund; and \$2.2 million from other funds, including \$500,000 from the federal Social Services Block Grant.⁹

School Readiness Records

Administration of the school readiness programs requires the Florida Partnership for School Readiness and the school readiness coalitions to maintain detailed records about the individual children enrolled in the programs. These records generally include information used to determine the eligibility of children for the school readiness programs, to enroll children with child care providers, to verify the attendance of children, to pay providers based upon the enrollment and attendance of children, and to audit and report those payments.

School readiness programs are generally provided for children who are economically disadvantaged; who have disabilities; or who are at risk of abuse, neglect, or abandonment.¹⁰ School readiness records necessarily include documentation essential to support each child's eligibility for services, including, for example, the child's age (i.e., birth certificate), family income, the parent's employment information, referrals from other agencies (e.g., Department of Children and Family Services), and, if the child is disabled, details about the child's disability. Because the facts underlying each child's eligibility for services must correspond to state and federal requirements for the various funding sources that support the school readiness program, payments made to child care providers must be tracked for each child back to one of these funding sources.

Each school readiness coalition must operate a "resource and referral network to assist parents in making an informed choice."¹¹ A resource and referral

network typically maintains detailed information about the particular services offered by child care providers. When a parent contacts the network, detailed information is collected from the parent about the child, the child's needs, and the child's potential eligibility for school readiness services. The network matches data collected about the child with data maintained about child care providers to give the parent options about the providers that could meet the child's needs.

School readiness programs are required to contain an "age-appropriate assessment of each child's development," a "pretest administered to children when they enter a program," and a "posttest administered to children when they leave the program."¹² Further, school readiness programs are intended to "prepare at-risk children for school, including health screening."¹³ School readiness coalitions routinely arrange for children enrolled in their school readiness programs to be administered various developmental screenings and other assessments. These screenings and assessments are used as diagnostic tools and to evaluate the progress of children receiving school readiness services. When diagnostic screenings reveal that a child has a disability, has other special needs, or has physical or mental health conditions, the child may be referred to other agencies for additional services.

In 2000, the Legislature declared that the "individual records of children enrolled in school readiness programs" are confidential and exempt from disclosure under the Public Records Law when those records are held in the possession of a school readiness coalition or the Florida Partnership for School Readiness.¹⁴ These records include "assessment data, health data, records of teacher observations, and identifying data, including the child's social security number."¹⁵ This public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2005, unless the exemption is saved from repeal through reenactment by the Legislature.

Central Agencies

In the early 1970s, a movement in the state's child care industry sought the increased regulation of child care providers, which culminated in 1974 with the Legislature's statewide licensure or registration of child

⁸ Section 411.01(5)(c)2., F.S.

⁹ Specific Appropriations 2122A-2122R, *General Appropriations Act for Fiscal Year 2004-2005*, ch. 2004-268, L.O.F.

¹⁰ See s. 411.01(6) and (13), F.S.

¹¹ Sections 411.01(5)(c)2.g. and 402.27, F.S.; see also s. 17, ch.

2001-170, L.O.F. (transferred child care and early childhood resource and referral to the Agency for Workforce Innovation from the Department of

Children and Family Services).

¹² Section 411.01(5)(c)2.c. and d., F.S.

¹³ Section 411.01(2)(a), F.S.

¹⁴ Section 3, ch. 2000-299, L.O.F.; s. 411.011, F.S.

¹⁵ *Id.*

care providers.¹⁶ As part of this movement, many local communities formed community child care coordinating agencies (commonly cited as “central agencies”). These central agencies collected information about the child care providers operating in their communities and created resource and referral networks to inform parents about the relative quality of the providers.

In 1989, the Legislature created a statewide child care resource and referral network, formalizing the efforts of the central agencies throughout the state. The former Department of Health and Rehabilitative Services was directed to give preference to the “already established” central agencies when selecting local child care resource and referral agencies for the statewide network.¹⁷ In addition to the original central agencies formed in the 1970s, new central agencies proliferated to achieve statewide coverage for this statewide child care resource and referral network.

In 1996, the Legislature required the Department of Children and Families to contract with central agencies for monitoring the child care providers delivering the former subsidized child care program.¹⁸ The department also used central agencies for processing payments to child care providers under the former program. In 1999, the School Readiness Act’s consolidation of the state’s early childhood education and child care programs was accompanied by the creation of school readiness coalitions that would locally design, operate, and manage the school readiness programs, in effect replacing the duties of the central agencies under the former subsidized child care program.

Central agencies remain a part of the current school readiness system, several publicizing that they have operated in the state for more than 30 years. Central agencies exist today as businesses, privately organized corporate entities contracting with school readiness coalitions. When the school readiness coalitions were originally established, the new coalitions initially contracted with the central agencies operating in their communities to provide many of the same services that the agencies had provided under the former subsidized child care program. These services generally included enrollment services, operating the coalition’s single point of entry and unified waiting list, performing eligibility determinations, serving as the coalition’s local resource and referral agency, processing payments

to child care providers, conducting training of child care personnel, and carrying out other duties for the coalition. Many school readiness coalitions continue to contract with a central agency, although, more recently, several coalitions have expanded their coalition staffs to provide these services directly. Other coalitions have divided these services into multiple contracts and sought alternative vendors for part of or all of these services.

Electronic Database of School Readiness Records

The Florida Partnership for School Readiness has established a statewide electronic database system for tracking information about the state’s school readiness programs.¹⁹ This system, cited as the Statewide Child Care Administration and Reporting System, is composed of three integrated modules:

- *Child Care Management System – Enhanced Field System (CCMS-EFS).*—This module comprises data about children and child care providers for purposes of enrollment, eligibility determinations, attendance reporting, and payment of providers. This module serves as each coalition’s single point of entry and unified waiting list.
- *Statewide Reporting System (SRS).*—This module is used to track state and federal funds, produce aggregated statewide data on the school readiness system, and generate federal reports.
- *Child Care Resource and Referral (CCRR).*—This module maintains data about child care providers, including the market rates for their child care services, and about children referred by the resource and referral agency to these providers.

School readiness coalitions have access to this database system in their local communities. In addition, central agencies and other contractors assigned duties on behalf of a coalition are granted access to the system for purposes of performing those duties.

METHODOLOGY

Committee staff surveyed school readiness coalitions, central agencies, child care local licensing agencies, child care providers, and staff from the Florida Partnership for School Readiness, the Department of Education, and the Department of Children and Family Services. Committee staff also solicited input from the First Amendment Foundation. Finally, committee staff conducted interviews with staff from the partnership

¹⁶ Chapter 74-113, L.O.F.

¹⁷ Section 5, ch. 89-379, L.O.F.; s. 402.27, F.S.

¹⁸ Section 73, ch. 96-175, L.O.F.; former s. 402.3015, F.S. (2000).

¹⁹ Covansys Corporation operates the database system under contract with the Florida Partnership for School Readiness.

and from several school readiness coalitions and central agencies.

FINDINGS

Sunset Review Questions

The Open Government Sunset Review Act prescribes certain questions to be considered by the Legislature when determining whether to save a public records exemption from its scheduled repeal.²⁰

What specific records does the exemption affect?

The public records exemption under review applies to the “individual records of children enrolled in school readiness programs” when the records are held in the possession of a school readiness coalition or the Florida Partnership for School Readiness.

Confidential information.—The term “individual records” is not defined within the exemption; however, the exemption specifies that these confidential records include “assessment data, health data, records of teacher observations, and identifying data, including the child’s social security number.” The exemption is unclear whether it applies to all information contained in a child’s school readiness record or whether the exemption is limited to information that falls within the four specific classes listed in the exemption: assessment data, health data, records of teacher observations, and identifying data. For example, the exemption does not specify whether family income information submitted by a parent and used to determine a child’s eligibility for school readiness services would be confidential, since family income is not listed as one of these four classes of information.

Survey responses and interviews reveal that, in practice, school readiness coalitions and their central agencies generally interpret the exemption broadly as applying to all “child-specific” information and consequently keep confidential all records about individual children, regardless of the content of those records. This broad interpretation of the exemption, however, may be subject to challenge. Florida courts have held that the Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.²¹

²⁰ Section 119.15(4)(a), F.S.

²¹ *Krischer v. D’Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *rev. den.*, 520 So. 2d 586 (Fla. 1988); *Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *rev. den. sub nom.*, *Gillum v. Tribune Co.*, 503 So. 2d 327 (Fla. 1987).

Conversely, the courts could rely on the fourth class, “identifying data,” to shield from public disclosure any information that identifies (or could be used to identify) a child. A similar public records exemption for educational records maintained by the state’s educational institutions (e.g., public schools, state universities, and community colleges) specifies that “[p]ersonally identifiable records or reports of a student, and any personal information contained therein, are confidential.”²² Florida’s First District Court of Appeal has interpreted this exemption for educational records as preventing the release of any part of a student’s record, even if the student’s personally identifying information is redacted from the records,²³ despite that s. 119.07(1)(b), F.S., requires custodians of public records to redact from a record any information that is protected by an exemption and release the remainder of the record. More recently, the Fifth District Court of Appeal certified to the Florida Supreme Court as a question of great public importance whether the educational records exemption applies to the entire contents of a student’s record or applies only to personally identifiable information contained within that record, so that, upon request, the custodian must redact the personally identifiable information and release the balance of the record.²⁴ This question is pending before the Supreme Court.²⁵

In sum, although the exemption clearly provides that the individual records of children enrolled in school readiness programs are confidential, the exemption is unclear about the extent to which information contained within these records is protected by the exemption.

Entities holding confidential information.—Interviews with school readiness coalitions and central agencies revealed that the bulk of school readiness records, in many communities, are created and maintained by a central agency or other contractor²⁶ of a school readiness coalition, rather than by the coalition or its coalition staff. The public records exemption under review specifies that it applies to the individual records of children enrolled in school readiness programs,

²² Section 1002.22(3)(d), F.S.

²³ *Florida State Univ. v. Hatton*, 672 So. 2d 576 (Fla. 1st DCA 1996).

²⁴ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 58 (Fla. 5th DCA 2004).

²⁵ *WFTV, Inc. v. School Bd. of Seminole County*, Case No. SC04-918 (Fla. filed May 26, 2004).

²⁶ This report recognizes that a school readiness coalition is not required to contract with a central agency, but may contract with any qualified entity to perform the coalition’s duties on its behalf. For purposes of brevity, this section of the report uses the term “central agency,” but is intended to comprise either a central agency or another contractor.

“when held in the possession of the school readiness coalition or the Florida Partnership for School Readiness.” The exemption, however, does not specify whether the individual records of children are confidential when those records are held in the possession of a central agency.

To determine whether school readiness records are confidential when held in the possession of a central agency, two questions must be answered: (1) whether central agencies, as private entities contracting with school readiness coalitions, are subject to the Public Records Law; and (2) if they are, whether the public records exemption under review covers central agencies. Interviews revealed that central agencies generally believe that they are not subject to the Public Records Law or that the public records exemption under review protects their school readiness records.

Section 24(a), Art. I of the State Constitution specifies that the constitutional right of access to public records extends to a “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*” (emphasis added). Further, the Public Records Law applies to all governmental “agencies,” which s. 119.011(2), F.S., defines to include:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . , and any other public or private agency, person, partnership, corporation, or *business entity acting on behalf of any public agency*. (Emphasis added.)

In determining when a private entity (e.g., central agency) contracting with a public agency falls within the purview of the Public Records Law, the Florida Supreme Court has adopted a “totality of factors” test that uses a number of factors to indicate whether the public agency has a significant level of involvement in the operations of the private entity.²⁷

The factors considered by the court include, but are not limited to: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether services contracted for are an integral part of the public agency’s chosen decision-making process; (5) whether the private entity is performing a governmental

function or a function that the public agency otherwise would perform; (6) the extent of the public agency’s involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity is functioning.²⁸ The court observed that, because the relevant factors and circumstances vary from case to case, these factors are not intended to be all-inclusive.²⁹

To illustrate, the totality-of-factors test may be applied to school readiness coalitions. Like central agencies, school readiness coalitions are private entities and accordingly are not state agencies in the traditional sense. A coalition may be organized as a corporation or, if not legally established as a corporate entity, must designate a public entity or a private nonprofit organization to serve as its fiscal agent.³⁰

Applying the test, it appears that school readiness coalitions are subject to the Public Records Law. School readiness coalitions were established, beginning in 1999, as a product of the School Readiness Act. Funding for the coalitions is almost exclusively provided by the Legislature. The composition of each coalition’s membership is specified by the act. Coalition members are subject to the state’s code of ethics. Coalitions must follow the state’s competitive procurement requirements. Each coalition must submit its school readiness plan to the Florida Partnership for School Readiness, and the plan must be approved by the partnership before the coalition may implement the school readiness program or receive state funds. Finally, a coalition’s school readiness program must meet the requirements of the School Readiness Act and the performance standards and outcome measures established by the partnership. A similar analysis led the Attorney General to determine that the Public Records Law applies to school readiness coalitions.³¹

Because central agencies contract with school readiness coalitions, rather than contracting directly with a state agency (e.g., Florida Partnership for School Readiness), it is unclear whether the totality-of-factors test applies to central agencies and, consequently, whether central agencies are subject to the Public Records Law. To explain, since the open government requirements apply only to a private entity if it acts on behalf of a public body, those requirements may not apply — “two steps removed” — to a private entity that

²⁸ *Id.*

²⁹ *Id.* at 1032.

³⁰ Section 411.01(5)(f), F.S.

³¹ Op. Att’y Gen. Fla. 01-86 (2001).

²⁷ *News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992).

acts on behalf of a private entity that acts on behalf of a public body.

If, however, the courts determined that the Public Records Law applies to central agencies, it is further unclear whether school readiness records held by central agencies would be confidential, since it is unknown whether the public records exemption under review would be interpreted as covering central agencies. Because the courts have determined, as previously discussed in this report, that public records exemptions are to be narrowly construed, the courts may be unwilling to interpret the exemption under review as covering central agencies, since the agencies are not specifically listed in the exemption.

In sum, it is unclear whether the Public Records Law applies to central agencies and other contractors of school readiness coalitions and, if the Public Records Law does apply, whether the public records exemption under review would guard from public disclosure any school readiness records held in the possession of these central agencies or other contractors.

Whom does the exemption uniquely affect?

The public records exemption under review affects the individual children enrolled in school readiness programs and, consequently, affects their families. In order to benchmark the quantity of affected children, the Florida Partnership for School Readiness estimates the average number of children enrolled statewide in school readiness programs during a single month was 163,102 from September 2003 through August 2004. The partnership further cites that the Child Care Management System – Enhanced Field System (CCMS-EFS) contains the records of 369,942 individual children who received school readiness services between July 1, 2002, and August 1, 2004.

What is the exemption’s public purpose or goal?

In 2000, the Legislature, when enacting the public records exemption under review, found that the exemption was “a public necessity in order to ensure the privacy of individual children in school readiness programs.”³² Survey responses expound on the exemption’s protection of children’s privacy, citing that the exemption helps to defend children from labeling and other social stigmas. The survey responses explain that “labeling” involves a child’s having a developmental disability, substandard educational skills, or other special needs, which may, if the child’s challenges are made public, impose artificial

limitations on the child’s progress or lead to other psychological effects.

The survey responses similarly describe other sensitive information about children which may, if made public, produce social stigmas or cause emotional harm to children. Several examples of this sensitive information include certain medical conditions (e.g., HIV status, genetic disorders, parental substance abuse at birth); mental health or psychological conditions; a child’s being the victim of abuse, neglect, or abandonment; and the child’s family financial conditions, including whether the family receives temporary cash assistance or other public support.

In addition to the public purpose found by the Legislature (i.e., children’s privacy), survey responses cited that the exemption serves the additional public purpose of protecting children’s safety. The survey responses described that the exemption reduces access to information that would help an individual planning to abduct a child in locating the child, including, for example, noncustodial parents involved in custody disputes, noncustodial parents of children removed from parental custody or placed in protective supervision, and sexual predators.

Is the information otherwise readily obtainable?

The individual records of children enrolled in school readiness programs are compiled and maintained exclusively for purposes of administering those programs. The records are held in the possession of school readiness coalitions, central agencies, other contractors of the coalitions, and the Florida Partnership for School Readiness. Information contained in the records does not appear to be readily accessible by the general public from other sources.

Similar information about children served in school readiness programs is possessed by the private child care providers and public schools that deliver the school readiness services. Private child care providers have not been determined subject to the Public Records Law, and interviews confirm that these providers keep confidential the information received by them about children and their families. Survey responses cite that, when a public school delivers school readiness services, the federal Family Educational Rights and Privacy Act (FERPA)³³ would require that the records

³² Section 4, ch. 2000-299, L.O.F.

³³ 20 U.S.C. s. 1232g (commonly cited as the “Buckley Amendment” or the “Buckley/Pell Amendment,” FERPA prohibits all educational agencies and institutions that receive federal funds under a program of the U.S. Department of Education from disclosing educational records about the student without the student’s consent); *see also* s. 1002.22, F.S. (Florida’s implementation of FERPA).

maintained by the school or school district about children receiving those services be kept confidential. Further, when a school readiness coalition receives referrals for school readiness services from the Department of Children and Family Services for at-risk children, records of the children's prior child abuse, neglect, or abandonment are confidential.³⁴

Maintenance of the Exemption

The Open Government Sunset Review Act specifies that a public records exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose.³⁵ In addition, to maintain an exemption, the Legislature must find that the exemption's public purpose is "sufficiently compelling to override the [state's] strong public policy of open government."³⁶ An exemption's public purpose is sufficient, if:

- The exempted record is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.³⁷

Although only one of these criteria must be met in order to maintain the exemption, the twin public purposes of the public records exemption under review (i.e., protecting the privacy and safety of children) satisfy two of these criteria.

First, as previously observed in this report, school readiness records contain sensitive personal information about the children enrolled in school readiness programs. Public release of these school readiness records would invade the privacy of these children, potentially causing harm as a result of labeling and other social stigmas. Further, research for this report demonstrated that public disclosure of school readiness records would jeopardize the safety of these children by increasing availability to information about the children's locations, which may facilitate their abduction.

Second, survey responses indicated that the public records exemption under review is essential to the administration of the school readiness program. The survey responses asserted that, without the exemption,

the families of many children eligible for school readiness services would be discouraged from enrolling their children in the program. Further, survey responses and interviews suggested that parents, child care personnel, and other professionals (e.g., social workers and mental health counselors) may become reluctant to enter detailed information about children into school readiness records if this information were open to public disclosure. The survey responses and interviews contend that this resultant decrease in access to detailed information about children enrolled in school readiness programs would significantly reduce the effectiveness of the program and the services available to the children.

RECOMMENDATIONS

Committee staff recommends that the Legislature maintain the public records exemption in s. 411.011, F.S., for the individual records of children enrolled in school readiness programs. Committee staff further recommends, however, that the Legislature consider revisions to the exemption, consistent with the findings of this report, to:

- Clarify whether the exemption shelters from public disclosure the entire contents of a child's school readiness record or whether the exemption shields only "identifying data" contained within the record, so that, upon request, the custodian must redact the identifying data and release the remainder of the record; and³⁸
- Clarify whether school readiness records held in the possession of a central agency or other contractor of a school readiness coalition are confidential and exempt from public disclosure.

³⁴ Section 39.202, F.S.

³⁵ Section 119.15(4)(b), F.S.

³⁶ *Id.*

³⁷ Section 119.15(2) and (4)(b), F.S.

³⁸ The Legislature may wish to review the Florida Supreme Court's forthcoming ruling in *WFTV, Inc. v. School Bd. of Seminole County* when clarifying the question of whether school readiness records must be redacted and released. *See supra* note 25.