



# The Florida Senate

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Committee on Children, Families, and Elder Affairs

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## OPEN GOVERNMENT SUNSET REVIEW OF S. 125.901, F.S., CHILDREN'S SERVICES COUNCILS AND JUVENILE WELFARE BOARDS

### Issue Description

Section 125.901, F.S., authorizes Florida counties, by ordinance, to create special districts to provide funding for children's programs and services.<sup>1</sup> The governing boards of these districts are known as children's services councils or juvenile welfare boards (collectively, "CSCs").<sup>2</sup> The statute authorizes CSCs to perform a broad spectrum of functions, many of which require the CSCs to obtain information about the children served by CSC programs.<sup>3</sup>

In 2004, the Legislature amended s. 125.901, F.S., to create a public records exemption for personal identifying information held by a CSC, or by a service provider or researcher under contract with a CSC, concerning a child or the child's parent or guardian.<sup>4</sup> The exemption was specifically made retroactive.<sup>5</sup> This exemption is subject to review under s. 119.15, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2009, unless saved from repeal through reenactment by the Legislature.

### Background

#### Florida Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>6</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level:

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.<sup>7</sup>

Consistent with this constitutional provision, Florida's Public Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.<sup>8</sup>

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

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<sup>1</sup> Section 125.901(1), F.S.

<sup>2</sup> Section 125.901(1)(a), F.S.

<sup>3</sup> Section 125.901(2)(a), F.S.

<sup>4</sup> Section 125.901(11)(a), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Sections 1390, 1391 F.S. (Rev. 1892).

<sup>7</sup> Fla. Const. art. I, s. 24(a).

<sup>8</sup> Section 119.07, F.S.

means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>9</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency<sup>10</sup> in connection with official business, which are used to “perpetuate, communicate or formalize knowledge of some type.”<sup>11</sup> Unless made exempt, all such materials are open for public inspection as soon as they become records.<sup>12</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>13</sup> Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.<sup>14</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>15</sup> A bill enacting an exemption or substantially amending an existing exemption<sup>16</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>17</sup>

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.<sup>18</sup> If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>19</sup> If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.<sup>20</sup>

### **Open Government Sunset Review Act**

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.<sup>21</sup> Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>22</sup>

Pursuant to the Open Government Sunset Review Act, an exemption may be created, revised or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.<sup>23</sup> An identifiable public purpose is served if the exemption meets one of three specified 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. An exemption meets the statutory criteria if it:

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<sup>9</sup> Section 119.011(11), F.S.

<sup>10</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . 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.”

<sup>11</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>12</sup> *Tribune Co. v. Cannella*, 458 So.2d 1075, 1077 (Fla. 1984).

<sup>13</sup> Fla. Const. art. I, s. 24(c).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Pursuant to s. 119.15 (4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

<sup>17</sup> Fla. Const. art. I, s. 24(c).

<sup>18</sup> *WFTV, Inc. v. School Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5<sup>th</sup> DCA), *review denied*, 892 So.2d 1015 (Fla. 2004).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 54.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(5)(a), F.S.

<sup>23</sup> Section 119.15(6)(b), F.S.

- (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 the safety of such individuals; **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 would injure the affected entity in the marketplace.<sup>24</sup>

The Act also requires the Legislature to consider six questions that go to the scope, public purpose and necessity for the exemption.<sup>25</sup>

### **Children's Services Councils**

In 1986, the Legislature empowered Florida counties to create special, countywide districts for the sole purpose of funding children's services.<sup>26</sup> The statute authorizes counties to create (1) independent special districts, for which the county governing body must seek voter approval to levy annual *ad valorem* property taxes;<sup>27</sup> or (2) dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.<sup>28</sup> The governing boards of the special districts are known as CSCs. The membership of the CSCs is prescribed by statute.<sup>29</sup>

There are eleven active CSCs in Florida:

- CSC of Broward County;
- Jacksonville Children's Commission (Duval);
- Children's Services Foundation of Highlands County, Inc.;
- Children's Board of Hillsborough County;
- CSC of Lake County;
- CSC of Martin County;
- The Children's Trust (Miami-Dade);
- CSC of Okeechobee County;
- CSC of Palm Beach County;
- JWB-CSC of Pinellas County; and
- CSC of St. Lucie County.<sup>30</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Section 119.15(6)(a), F.S. See the Findings and/or Conclusions section of this report for a review of the six questions as they relate to this particular exemption.

<sup>26</sup> Chapter 86-197, L.O.F.

<sup>27</sup> Section 125.901(1), F.S. Independent special districts are located in Broward, Hillsborough, Martin, Miami-Dade, Okeechobee, Palm Beach, Pinellas and St. Lucie counties. See Florida Children's Services Council (hereinafter, "FCSC"), *About Children's Services Councils*, [http://www.floridacsc.org/about\\_csc/index.php#anatomy](http://www.floridacsc.org/about_csc/index.php#anatomy) (last visited July 21, 2008).

<sup>28</sup> Section 125.901(7), F.S. Dependent special districts are located in Duval, Highlands, and Lake Counties. See FCSC, *About Children's Services Councils*, [http://www.floridacsc.org/about\\_csc/index.php#anatomy](http://www.floridacsc.org/about_csc/index.php#anatomy) (last visited July 21, 2008).

<sup>29</sup> Section 125.901(1), F.S.

<sup>30</sup> E-mail from Kristin Vallese, Director of Communications, FCSC (June 25, 2008, 11:29 A.M.) (on file with Senate Committee on Children, Families and Elder Affairs (hereinafter, "CFEA")) and telephone conversation with Cathleen Blair, Executive Director, CSC of Okeechobee County (July 22, 2008). Ms. Vallese suggested that Manatee and Brevard counties may also have CSCs, but neither does. Manatee County has a nonvoted, countywide, one-third millage rate dedicated to children's services and a Children's Advisory Board which manages the fund. Interview with Mike Nueges, Children's Services Coordinator, Manatee County Community Services Department (July 24, 2008).

Pursuant to statute, the CSCs are authorized to exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies (except the public school system) that operate for the benefit of children;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services;
- Lease or buy necessary real estate, equipment and personal property; and
- Employ necessary personnel.

As funders, service providers, and researchers of children's issues and children's services, CSCs (and the service providers with whom they contract) receive and hold identifying information about individual children and their families, including names, addresses, telephone numbers, Social Security numbers, school records, medical records and photographs.

The Children's Services Council of Broward County is typical of the active CSCs in Florida. The Broward CSC provides funding to approximately one hundred programs, including after-school programs for low income families, preschool programs for children with special behavioral needs, programs for at-risk youth, and family strengthening programs. The CSC maintains a web-based data system that includes demographic information (e.g., name, date of birth, Social Security number, and cultural background) for each program participant. The CSC also collects data from other sources (e.g., test information from schools,<sup>31</sup> and abuse and neglect records from the Department of Children and Families<sup>32</sup>), often pursuant to agreements that specify the conditions upon which the information is shared, and include a requirement that the CSC destroy the data after use. The CSC uses the data to analyze the specific outcomes of funded programs and to conduct systems research.<sup>33</sup>

## **Findings and/or Conclusions**

The Open Government Sunset Review Act requires the Legislature to consider six questions when deciding whether to save a public records exemption from scheduled repeal.

### **What specific records does the exemption affect?**

The exemption at issue here exempts from public disclosure "personal identifying information of a child or the child's parent or guardian, held by a children's service council . . . or other similar entity . . . or held by a service provider under contract with such entity . . ."<sup>34</sup> The Legislature explicitly found that the exemption does not extend to "nonidentifying information regarding services provided to, or research concerning, children."<sup>35</sup>

"Personal identifying information" is not explicitly defined in the Florida Statutes, although the term is used frequently. At least one Florida court, however, has relied on the definition found in the Family Educational Rights and Privacy Act of 1974 (FERPA). Pursuant to FERPA, "personally identifiable information" includes, but is not limited to: (a) the

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<sup>31</sup> The Family Educational Rights and Privacy Act of 1974 (FERPA) prohibits schools from disclosing education records without a parent's prior, written consent except in certain circumstances. One exception allows schools to disclose education records to school officials who have a legitimate interest in the information. This exception has been interpreted to allow schools to also disclose education records to "parties to whom they have outsourced services so long as they do so under the same conditions applicable to school officials who are actually employed." LeRoy S. Rooker, Director, Family Policy Compliance Office, *Letter to Clark County School District (NV) re: Disclosure of Education Records to Outside Service Providers*, FERPA Online Library (June 28, 2006). This exception to FERPA may allow a school district to share information with a CSC.

<sup>32</sup> Section 39.202(1)(i), F.S., allows the department to disclose abuse records to individuals and entities for "bona fide research, statistical, or audit purposes." This provision may allow the department to share abuse records with a CSC.

<sup>33</sup> Interview with Sue Gallagher, Director of Research, Analysis & Planning, CSC of Broward County (August 28, 2008). Also, Interview with Tom Sheehan, Chief of Policy and Operations/General Counsel, Children's Services Council of Palm Beach County (September 2, 2008).

<sup>34</sup> Section 125.901(11)(a), F.S.

<sup>35</sup> Chapter 2004-86, s. 2, L.O.F.

student's name; (b) the name of the student's parent or other family member; (c) the address of the student or student's family; (d) a personal identifier, such as the student's Social Security number or student number; (e) a list of personal characteristics that would make the student's identity easily traceable; or (f) other information that would make the student's identity easily traceable.<sup>36</sup>

### **Whom does the exemption uniquely affect, as opposed to the public?**

The exemption uniquely affects the children and families who receive services from a CSC or from a CSC-funded agency or program.

### **What is the identifiable public purpose or goal of the exemption?**

The Legislature's statement of public necessity for this exemption suggests that the purpose for the exemption is to protect sensitive, personal information, the release of which could jeopardize the safety of the individuals involved:

The Legislature finds that public availability of information that directly reveals the identity of a child, or that indirectly identifies the child through the identification of the child's parent or guardian, would be contrary to the state's compelling interest in protecting the public safety. The Legislature finds that it is necessary to exempt such personal identifying information so that such information cannot be used to facilitate stalking, harassment, abduction, or abuse of any child who is the subject of such information. The Legislature finds that this interest outweighs any public benefit derived from releasing such identifying information.<sup>37</sup>

In response to a questionnaire about this public records exemption, the CSCs uniformly expressed concern that if identifying information about a child were disclosed, it could be used to locate and harm the child identified.<sup>38</sup> One CSC noted that the exemption is particularly important in situations where parents are disputing custody and the "physical address or other identifying information [might be] accessed in order to harm a child."<sup>39</sup>

The CSCs also noted that families who need services may be hesitant to seek assistance, and agencies funded by CSCs may be unwillingly to share information, if they are not assured that identifying information will be protected from disclosure. The CSCs indicated that continued receipt of information from funded programs was especially vital to their ability to analyze and evaluate programmatic outcomes.<sup>40</sup>

The exemption thus appears to have an identifiable public purpose that meets the goal of protecting sensitive personal information as stated in s. 119.15(6)(b)2, F.S. This public purpose is compelling and cannot be accomplished without making the sensitive information exempt. Because the exemption is limited to personally identifying information, it also appears to be no broader than necessary to meet the public purpose it serves.

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<sup>36</sup> 34 C.F.R. s. 99.3 (2004). *See also, Florida State University v. Hatton*, 672 So.2d 578 (Fla. 1st DCA 1996). Similarly, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) defines "individually identifiable health information" as information, including demographic data, that relates to an individual's health care and that identifies the individual or reasonably can be used to identify the individual (e.g., name, address, birth date, Social Security number). 45 C.F.R. s. 160.103 (2002).

<sup>37</sup> Chapter 2004-86, s. 2, L.O.F.

<sup>38</sup> A survey entitled *Open Government Sunset Review Act Survey: Public Records Exemption for Children's Services Council* was distributed to the eleven active CSCs (Broward, Duval, Hillsborough, Highlands, Lake, Martin, Miami-Dade, Okeechobee, Palm Beach, Pinellas and St. Lucie); six CSCs, as well as the FCSC, responded to the questionnaire. (Responses on file with CFEA).

<sup>39</sup> Response from the Children's Board of Hillsborough County (on file with CFEA).

<sup>40</sup> *See e.g.*, Response from CSC of Broward County (on file with CFEA).

**Can the information be readily obtained by alternative means? If so, how?**

Much of the information that is provided to CSCs by other entities (e.g., schools, medical providers or agencies providing services), is exempt from public disclosure. To the extent the information is not otherwise protected, however, it could be obtained from those entities.

**Is the record protected by another exemption?**

Some of the information received and held by CSCs is protected by other public records exemptions. A CSC may, for example, receive child abuse records, which are confidential and exempt from public disclosure. Although it may be disclosed to certain, enumerated individuals and entities, the information contained in child abuse records retains its confidential and exempt status once in the possession of those individuals and entities.<sup>41</sup>

A CSC may also receive and hold a child's school or medical records. Both educational records<sup>42</sup> and medical records<sup>43</sup> are generally exempt from public disclosure except to specified persons and organizations under certain circumstances. It is less definite, however, that the information contained in these records, once disclosed pursuant to an exception (to a CSC, for example), retains its exempt status.<sup>44</sup>

To the extent the information held by a CSC may include Social Security numbers of children or their parents, pursuant to s. 119.071(5)(a)5, F.S., all Social Security numbers held by an agency are confidential and exempt.

**Are there multiple exemptions for the same type of record that it would be appropriate to merge?**

It does not appear that it would be appropriate to merge the exemption with any other statutory exemption.

**Options and/or Recommendations**

Senate professional staff recommends that the Legislature retain the public records exemption established in s. 125.901(11), F.S., which makes personal identifying information of a child or a child's parent held by a CSC, or by a service provider or researcher under contract with a CSC, exempt from public disclosure. The exemption is narrowly drawn to meet the stated and compelling public necessity of protecting information, the disclosure of which might jeopardize the safety of the individuals identified. The exemption therefore meets the criteria for reenactment.

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<sup>41</sup> Section 39.202(1), F.S.

<sup>42</sup> Section 1002.22(3)(d), F.S. *See also*, The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

<sup>43</sup> *See* First Amendment Foundation, Volume 30, *Government-in-the-Sunshine Manual* 157-158 (2008). *See also*, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191.

<sup>44</sup> Section 1002.22, F.S., for example, does not explicitly provide that information disclosed pursuant to an exception to the exemption retains its exempt status. The Florida Supreme Court has held, however, that "the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands." *Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998). *See also*, First Amendment Foundation, Volume 30, *Government-in-the-Sunshine Manual* 124 (2008).