

**RECOMMENDATIONS
FOR FURTHER CONSIDERATION
BY THE COMMISSION AT ITS OCTOBER 2008 MEETING**

A. EXEMPTIONS

- 1) **Economic Development Exemptions**
 - > Amend EDA exemptions to allow for greater public access and oversight.
 - > Expand exemption for state transportation projects under § 337.168, F.S., to include local government transportation projects.

- 2) **Social Security Numbers**
 - > Amend the general SSN exemption in ch. 119, F.S., so that all SSNs are subject to the same disclosure requirements and treated equally.
 - > **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.

- 6) **DCF Exemptions**
 - > Amend ch. 39, F.S., to clarify that children who have been in the state foster care system have a right of access to their own records and allow preadoptive parents access to potential adoptee records.

I. CITIZEN'S RIGHTS

- > Enact a Fair Information Practices act to allow for greater data protection and integrity.

**RECOMMENDATIONS
APPROVED
BY THE COMMISSION AT ITS AUGUST 2008 MEETING**

A. EXEMPTIONS

1) Definitions: Exempt v. Exempt & Confidential

> Amend ch. 119, F.S., to include a statutory definition of the terms “exempt” and “exempt and confidential”. [UNANIMOUS]

2) Redundancy

> Review all exemptions to ch. 119, F.S., for redundant exemptions; create universal exemptions in ch. 119 where possible and/or appropriate. [UNANIMOUS]

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 review of all newly created exemptions to the PRL and SL once 5 years after enactment and then every 10 years thereafter. [UNANIMOUS]

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licensed by DBPR and DOH to stipulate that such records become public once the investigation is complete or no longer active. [UNANIMOUS]

5) Clemency

> Amend statutes re: clemency proceedings to allow access to the clemency report by the petitioner. [UNANIMOUS]

6) DCF Exemptions

> Amend ch. 39, F.S., to stipulate that agency records of abuse, neglect, etc. are public record and that all identifying information in such records is exempt from public disclosure. [UNANIMOUS]

7) **Law Enforcement exemptions**
> Create an exception to the autopsy photo exemption that would allow limited but justifiable disclosure of the exempt records for legitimate investigative, training, medical examiner, or medical school purposes. (FDLE Recommendation 3/Aug. 26 – as amended upon recommendation of the Commission) [UNANIMOUS]

8) **Home Address Exemption/Classes of Employees**
> Amend the exemptions for home addresses, etc. of certain, specified government employees to stipulate that the home addresses and photographs of such employees are *not* exempt if the employee is a convicted sex offender or sexual predator. [UNANIMOUS]

9) **Names of Retirees**
> Amend the exemption under § 121.031(5), F.S., for names and lists of retirees to allow for greater public access and oversight. *Upon successful motion by Cmsr. D'Alemberte the following recommendation was substituted:*
> Repeal the exemption under § 121.031(5), F.S., for names and lists of retirees. [APPROVED 4/2]

10) **Consistency of Language**
> Recommend that OPPAGA conduct a thorough review of all open government exemptions for consistency and modernity of language, bringing all exemptions within the current constitutional standard. [UNANIMOUS]

B. FEES

> Amend the current fee provision in ch. 119, F.S., to:
1. retain the current 15 cents/page or actual cost of duplication and other statutory fee provisions;
2. delete the extensive use provision;
3. stipulate that copies of public records in any electronic medium maintained or utilized by an agency must be provided for the actual cost of duplication;
4. allow agencies to negotiate a fee for a “specialized electronic service or product” (definition included).; and
5. allow for a waiver of all fees.
(proposed fee amendment #3) [UNANIMOUS]

C. ELECTRONIC ACCESS

1) **Standards for databases & data dictionaries**
> Create standards for new or redesigned agency databases, data dictionaries, and metadata in order to facilitate public access to electronic records.

2) **Redaction**
> Request that the Agency for Enterprise Information Technology review the issue of new or substantially redesigned agency electronic systems being compliant with ch.119, F.S.; and recommend language for development and procurement requirements that mandate that all new systems facilitate the timely and inexpensive

redaction of exempt information. For existing agency electronic systems, recommend methods to reduce the cost and time required to redact information from these systems. This is not to be considered an unfunded mandate. [UNANIMOUS]

4) E-Mail Access

> Encourage all agencies to provide enhanced public access to all public record e-mail. [UNANIMOUS]

6) Emerging Technologies: Text Messages; Instant Messages

> Encourage all agencies to adopt policies that prohibit the use of text and instant messaging technologies during public meetings and/or hearings. [UNANIMOUS]

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. [UNANIMOUS]

E. PUBLIC PARTICIPATION

> Amend the law to require that all agencies adopt policies allowing for a reasonable opportunity for public participation at all meetings subject to the Sunshine Law. [UNANIMOUS]

F. EDUCATION AND TRAINING

> Require all elected and appointed government officials to undergo education and training on the requirements of Florida's open government laws, and encourage such training for all appropriate agency employees. [UNANIMOUS]

G. ENFORCEMENT AND COMPLIANCE

> Amend the law to allow citizens to seek an informal opinion from the Office of Open Government when denied access to public records. [UNANIMOUS]

> 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 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 used for the purpose of enhancing access to public meetings and public records. [UNANIMOUS]

H. OFFICE OF OPEN GOVERNMENT

> Codify the Office of Open Government within the Governor's Office for the purpose of providing education, information, and public outreach on open government issues with the stipulation that such placement be reviewed in five years (with the suggestion that the Legislature consider making the Office an independent cabinet-level agency). [UNANIMOUS]

> Expand the authority of the Office of Open Government to include all agencies, including local governments. [UNANIMOUS]

> In five years, consider consolidation of 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. [UNANIMOUS]

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. [UNANIMOUS]

> Codify the Citizen's Bill of Rights as a preamble to the consolidated open government law. [UNANIMOUS]

> Require the Department of State/Division of Information Services and the Bureau of Archives and Records Management to adopt a model rule on access to public records for use by all agencies. [UNANIMOUS]

J. LEGISLATURE

> Suggest that the House and Senate review current rules regarding access to legislative records and meetings and amend such rules to better reflect current access policies under Florida's open government laws. [UNANIMOUS]

**RECOMMENDATIONS
REJECTED
BY THE COMMISSION AT ITS AUGUST 2008 MEETING**

A. EXEMPTIONS

1) Law Enforcement exemptions

> Create an exemption for any information submitted to FDLE for purposes of subscribing to e-mail notifications regarding location of registered sex offenders. (FDLE Recommendation 2/Aug 26)

● *Failed on a 3/3 vote. FDLE representative Mike Ramidge asked for reconsideration of a narrowed recommendation that would exempt only the e-mail address submitted to FDLE for purposes of subscribing to e-mail notifications:*

> Create an exemption for any e-mail address provided to FDLE by persons other than sexual predators or offenders when registering for the sexual predator alert notification system. (FDLE Recommendation 2/Aug 27)

● *The narrowed recommendation failed on a 4/2 vote.*

> Expand the current exemption under § 119.071(2)(b), F.S., for non-Florida information provided to a law enforcement agency to include information used to perform background checks related to the granting of a license by the State of Florida, as well as information relevant to promoting criminal intelligence, criminal investigative or domestic security efforts if such information is not a public record as originally held by any person or entity and is made available to a Florida criminal justice agency on a confidential or non-public basis. (FDLE Recommendation 1/Aug 26)

● *Commission members expressed concern about the breadth of this recommendation and noted that it was different from the recommendation proposed by FDLE at the May public hearing. Mr. Ramidge agreed to amend the recommendations for consideration the following day:*

> Expand the current exemption under § 119.071(2)(b), F.S., to include information relevant to promoting domestic security efforts that is not a public record as originally held by a non-Florida agency or person or entity and is made available to a Florida criminal justice agency on a confidential, non-public basis. (FDLE Recommendation 1A/Aug 27)

● *The narrowed recommended exemption failed on a 4/2 vote.*

> Create an exemption for information submitted to FDLE and DBPR for the purpose of background or licensing reviews of persons or entities seeking licensure for the purposes of owning, operating, managing, doing business with, or being associated with a state licensed slot gaming facility. (FDLE recommendation 1B/Aug 27)

● *The recommendation failed on a 3/3 vote.*

2) Litigation and Attorney Work-Product exemptions

> Expand the work product exemption in § 119.071(1)(d), F.S., to include fact work product. (#1) ● *Failed 4/2.*

> Eliminate the language in § 119.071(1)(d), F.S., requiring disclosure of the work product at the conclusion of the litigation.

(#2) ● *Failed 3/3.*

> Amend § 119.071(1)(d), F.S., to protect the public attorney's work product from discovery in the same manner that an attorney's work product is privileged in the civil discovery context. (#3) ● *Failed 3/3.*

> Expand the litigation exemption in § 286.011(8), F.S., to allow necessary persons to attend an attorney-client session.

(#4) ● *Failed 3/3.*

> Expand the litigation exemption in § 286.011(8), F.S., to allow the substantive discussions to include any matter raised in a claim or lawsuit or anticipated lawsuit against a public agency.

(#5A) ● *Upon suggestion of Cmsr. D'Alemberte, the word "anticipated" was replaced with "threatened". The amended recommendation failed 3/3.*

> Expand the litigation exemption in § 286.011(8), F.S., to allow the substantive discussions to include any matter raised in a claim or lawsuit against a public agency.

(#5B) ● *Upon suggestion of the Chair, the recommendation was narrowed so that it applied only to current claims or lawsuits. The amended recommendation failed 3/3.*

> Eliminate the requirement that the session be transcribed and made available at the conclusion of the litigation.

(#6) ● *Fails for a lack of a second to the motion that the recommendation be considered.*

> Require litigants against a public agency to obtain documents through the normal discovery process during the pendency of the litigation.

(#7) ● *Fails for a lack of a second to the motion that the recommendation be considered.*

**RECOMMENDATIONS
NOT ADOPTED
BY THE COMMISSION AT ITS AUGUST 2008 MEETING**

A. EXEMPTIONS

1) Law Enforcement Exemptions

> Amend exemptions for pre- and post-sentencing investigations to allow access to records once investigation is complete or no longer active.

● *After further inquiry, it was learned that the defendant has access to the pre-sentencing report and the Commission declined to consider the recommendation.*

2) Barriers to Employment

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

● *Upon discussion by the Commission it was determined that this issue was not consistent with our mission and was a policy issue best left to the consideration of the Legislature. No vote was taken.*

C. ELECTRONIC ACCESS

1) 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.

● *Based on comments provided by Pat Gleason on Aug. 26 and further discussion by the Commissioners, it was decided that no action was necessary as the two statements reflect current law. The statements will be included in the Conclusion section of the final report.*

2) Emerging Technologies

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

● *Based on testimony provided by Pat Gleason on Aug. 26, the Commission concluded no action was necessary as agencies currently have such authority under existing law.*

J. LEGISLATURE

> Amend Art. III, s. 4(e), Fla. Con. to allow for greater public access to legislative meetings (requires joint resolution).

● *After consideration and approval of the alternative recommendation – that the Legislature review its rules regarding access to legislative records and meetings – the*

Commission determined that this recommendation was not necessary at this point in time and no action was taken.