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August 2, 2018

The Honorable Matt Caldwell, Chair
Government Accountability Committee
The Florida House of Representatives
402 S. Monroe Street, Room 209 HOB
Tallahassee, FL 32399-1300

The Honorable Dennis Baxley, Chair
Committee on Government Oversight and Accountability
The Florida Senate
404 S. Monroe Street, Room 525 Knott
Tallahassee, FL 32399-1100

Re: Exemptions Subject to Open Government Sunset Review - 2019

Dear Representative Caldwell and Senator Baxley:

The First Amendment Foundation has conducted its annual review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2018 legislative session. Our comments on each follow below.

Section 119.071(4)(d)2.m., F.S. Department of Health – Home

Addresses: The First Amendment Foundation didn't object to the creation of this exemption. However, as a rule, before signing off on a home address exemption, we request that some sort of evidence that the employees and their families who are to be protected have been threatened or faced some sort of risk because of their employment. We suggest, therefore, that legislative staff revisit the issue of whether the exemption is, in fact, needed to protect the specified DOH employees and their families.

In addition, there are numerous exemptions home addresses, etc. of certain government employees. Most of these exemptions, but not all, are found in s. 19.071(4)(d), F.S. The home address exemptions are inconsistent on the level of protection provided – some of the exemptions stipulate that the protected information is confidential and exempt, and others provide that the information is merely exempt.

We strongly urge the Legislature to consider consolidating all home address exemptions for government employees and officers into one section in ch. 119 and address the lack of consistency by creating one standard of protection.

Section 252.905, F.S. Emergency Planning: This public record exemption for information furnished by a person or business to the Division of Emergency Management for emergency planning purposes is sufficiently narrow and the First Amendment Foundation does not object to its reenactment as currently drafted.

Section 316.0777, F.S. Automated License Plate Recognition Systems: The FAF did not object to passage of this public record exemption for personal identifying information, including images and data obtained through the use of an automated license plate recognition system. However, given the controversy surrounding the use of such systems, we would suggest the exemption be amended to allow access by court order upon a showing of good cause.

Section 338.155(6), F.S. Personal Identifying Information – Toll Facilities: We are not opposed to the reenactment of this public record exemption for personal identifying information obtained by a municipal expressway authority for paying, prepaying, or collecting tolls.

Section 381.82, F.S. Alzheimer's Disease Research Grant Advisory Board: The public record and meetings exemptions relating to applications to the Alzheimer's Disease Research Grant Advisory Board are sufficiently narrow and the Foundation does not object to the reenactment of the exemptions as currently drafted.

Section 397.334(10), F.S. Treatment-Based Drug Court Programs: The public record exemption for information relating to participants in treatment-based drug court programs, as well as persons considered for treatment, is sufficiently narrow and we do not object to its reenactment as currently drafted.

Section 466.051, F.S. Dental Workforce Surveys: The public record exemption for personal identifying information contained in dental workforce surveys completed by dentists and dental hygienists held by the Department of Health is sufficiently narrow and the Foundation does not oppose its reenactment as currently drafted.

Section 501.171, F.S. Data Breach Notifications: The FAF did not object to passage of this public record exemption tied to the Florida Information Protection Act of 2014 and doesn't object to its reenactment provided that the exemption is not broadened or significantly amended.

Section 559.5558, F.S. Examinations and Investigations – Office of Financial Regulation: The Foundation does not object to reenactment of this limited exemption for active examinations and investigations of financial institutions conducted by the Office of Regulation.

Section 585.611, F.S. Animal Researchers – Personal Identifying Information: The public record exemptions for personal identifying information of persons conducting animal research is sufficiently narrow and the Foundation does not oppose its reenactment as currently drafted.

Section 627.0628.(3)(f)(2), F.S. Insurance Flood Loss Model: The Foundation did not object to passage of the exemption for trade secrets related to flood loss models and does not oppose reenactment of the exemption.

Section 655.057, F.S. Examinations – Office of Financial Regulation: The public record exemption for active informal enforcement actions conducted by the Office of Financial Regulation is sufficiently narrow and we do not object to its reenactment as currently drafted.

Section 662.148, F.S. Family Trust Companies – Office of Financial Regulation: The First Amendment Foundation raised serious concerns regarding passage of the family trust company exemptions, going so far as to request a veto of the legislation. The exemptions protect critical information about family trust companies, allowing access to only the most basic information such as the name of the trust company and its registered agent. According to the constitutionally-required statement of public necessity, the exemption is needed to protect the safety of “families with a high net worth who are frequently the targets of criminal predators.” There is no factual basis or substantiated evidence supporting this assertion, and in our opinion, the exemption is unconstitutionally overbroad and antithetical to the public interest. We suggest, therefore, that the exemption be significantly narrowed or, in the alternative, allowed to sunset. We object to reenactment of s. 662.148, F.S., in its current form.

Section 790.0601, F.S. Personal Identifying Information – Concealed Weapon Permits: Although the First Amendment Foundation objects generally to the protection of information that would identify those persons who have concealed weapon permits, we did not oppose passage of this exemption given that the information is exempt in the hands of the permitting agency. We are not opposed to reenactment of this exemption as currently drafted.

Section 1004.28, F.S. Meetings - University Direct Support Organizations: The exemption for portions of a university’s DSO board of directors when the board is discussing research funding proposals or plans or programs to support research, is, we believe, sufficiently narrow and we do not object to reenactment of the exemption in its current form.

Please let us know if you have any questions or need additional information.

Sincerely,



Barbara A. Petersen, President