

The Legislative Subcommittee of the Sunshine Committee presents the following recommendations to the legislature:

1. In general, the legislature should refrain from adding additional exemptions to public records until the Sunshine Committee can formally review current exemptions and provide recommendations on how to improve public records law.
2. In relation to specific bills currently introduced and moving through the legislative process during the 2019 session:
 - a. HB 2016: The legislature should refrain from any change to disclosure of public records, as contained in Section 11.
 - b. HB 2331: The legislature should maintain the public interest balancing test for access to public records pertaining to information received through a tip line.

Discussion:

1. In general, the legislature should refrain from adding additional exemptions to public records until the Sunshine Committee can formally review current exemptions and provide recommendations on how to improve public records law.

The legislature established the Sunshine Committee passed in 2017 with direction to review the more than 500 exemptions to public records law. Creating more exemptions to disclosure of public records while this project is ongoing would impede the mission of the Sunshine Committee and contradict its intent. We recommend the legislature refrain from adding additional exemptions until the Sunshine Committee can finish its work.

2. In relation to specific bills currently introduced and moving through the legislative process during the 2019 session:
 - a. HB 2016: The legislature should refrain from any change to disclosure of public records, as contained in Section 11.

Punitive Action: We recommend the legislature refrain from creating a punitive punishment for release of public records released in good faith by public agencies. In an effort to increase access to public records, HB 2101 explicitly holds public agencies harmless for releasing public records in good faith.

Creating punitive penalties for release of public records would directly contradict the intent of HB 2101. First, the administrative burden put upon agencies that would be required to follow two conflicting statutes would make response to public records requests more difficult. Second, in the face of potential punitive action, public agencies would likely be much more reticent to respond to any public records requests, even ones not explicitly captured in HB 2016, for fear of the information they released later being deemed personal information.

Expansion of personal information definition: The definition of personal information included in HB 2016 is broad enough to potentially include more information than is even explicitly included. Coupled with above concern, this has the potential to substantially reduce access to public records.

Contradicts recommendations of Sunshine Committee: The Sunshine has undergone a rigorous study of how to deal with personal information in public records law (Legislative Recommendations on PII). HB 2016 would contradict those recommendations, specifically, that access to public employee personal

information should be available to the public upon the requestor showing “by clear and convincing evidence that the public interest requires disclosure in a particular instance.” HB 2016 would preclude disclosure even when the public interest is clearly served by disclosure.

- b. HB 2331: The legislature should maintain the public interest balancing test for access to public records pertaining to information received through a tip line.

The Sunshine Committee has recommended (Legislative Recommendations on PII) that all personal information be at least accessible if the requestor can show “by clear and convincing evidence that the public interest requires disclosure in a particular instance.” HB 2331 would remove this public-interest access to personal information.