

CHAPTER 2014-190

Committee Substitute for Committee Substitute for Senate Bill No. 1526

An act relating to public records; amending s. 501.171, F.S.; creating an exemption from public records requirements for information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations; authorizing disclosure under certain circumstances; defining the term “proprietary information”; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) is added to section 501.171, Florida Statutes, as created by SB 1524, 2014 Regular Session, to read:

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification required by this section, or received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- 1. All information to which another public records exemption applies.
- 2. Personal information.
- 3. A computer forensic report.
- 4. Information that would otherwise reveal weaknesses in a covered entity's data security.
- 5. Information that would disclose a covered entity's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

- 1. Is owned or controlled by the covered entity.
- 2. Is intended to be private and is treated by the covered entity as private because disclosure would harm the covered entity or its business operations.
- 3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- 4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

- a. Trade secrets as defined in s. 688.002.
- b. Competitive interests, the disclosure of which would impair the competitive business of the covered entity who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.171, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.171, Florida Statutes, is likely to result in an investigation of such violation because a data breach is likely the result of criminal activity that may lead to further criminal activity. The

premature release of such information could frustrate or thwart the investigation and impair the ability of the Department of Legal Affairs to effectively and efficiently administer s. 501.171, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs would undo the specific statutory exemption protecting that information.

(3) An investigation of a data breach or improper disposal of customer records is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial and health information. Such information could be used for the purpose of identity theft. In addition, release of such information could subject possible victims of the data breach or improper disposal of customer records to further financial harm. Furthermore, matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors.

(4) Release of a computer forensic report or other information that would otherwise reveal weaknesses in a covered entity's data security could compromise the future security of that entity, or other entities, if such information were available upon conclusion of an investigation or once an investigation ceased to be active. The release of such report or information could compromise the security of current entities and make those entities susceptible to future data breaches. Release of such report or information could result in the identification of vulnerabilities and further breaches of that system.

(5) Notices received by the Department of Legal Affairs and information received during an investigation of a data breach are likely to contain proprietary information, including trade secrets, about the security of the breached system. The release of the proprietary information could result in the identification of vulnerabilities and further breaches of that system. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the covered entity submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

Section 3. This act shall take effect on the same date that SB 1524 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Approved by the Governor June 20, 2014.

Filed in Office Secretary of State June 20, 2014.