

CHAPTER 2021-33

Senate Bill No. 7074

An act relating to public records; amending s. 287.137, F.S.; providing a public records exemption for information received by the Attorney General pursuant to an investigation by the Attorney General or a law enforcement agency into certain social media platform activities; authorizing release of confidential and exempt information in certain instances; requiring certain information to remain confidential and exempt after an investigation is completed or ceases to be active; defining the term “proprietary business information”; providing for future legislative review and repeal of the exemption; amending s. 501.2041, F.S.; providing a public records exemption for information received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency into violations by certain social media platforms; authorizing release of confidential and exempt information in certain instances; requiring certain information to remain confidential and exempt after an investigation is completed or ceases to be active; defining the term “proprietary business information”; providing for future legislative review and repeal of the exemption; 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 (8) is added to section 287.137, Florida Statutes, as created by SB 7072, 2021 Regular Session, to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(8)(a) All information received by the Attorney General under paragraph (3)(d) pursuant to an investigation by the Attorney General 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 Attorney General:

1. In the performance of his or her official duties and responsibilities; or
2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or ceases to be active, the following information received by the Attorney General 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 identifying information.
3. A computer forensic report.
4. Information that would otherwise reveal weaknesses in a business' data security.
5. Proprietary business information.

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

1. Is owned or controlled by the business;
2. Is intended to be private and is treated by the business as private because disclosure would harm the business 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 Attorney General; and

5. Includes:

- a. Trade secrets as defined in s. 688.002.
- b. Competitive interests, the disclosure of which would impair the competitive advantage of the business that 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, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (10) is added to section 501.2041, Florida Statutes, as created by SB 7072, 2021 Regular Session, to read:

501.2041 Unlawful acts and practices by social media platforms.—

(10)(a) All information received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section 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 performance of its official duties and responsibilities; or
- 2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or 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 identifying information.
- 3. A computer forensic report.
- 4. Information that would otherwise reveal weaknesses in a business' data security.
- 5. Proprietary business information.

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

- 1. Is owned or controlled by the business;
- 2. Is intended to be private and is treated by the business as private because disclosure would harm the business 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; and

5. Includes:

- a. Trade secrets as defined in s. 688.002.
- b. Competitive interests, the disclosure of which would impair the competitive advantage of the business that 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, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that all information received by the Attorney General and the Department of Legal Affairs pursuant to an investigation by the Attorney General, the Department of Legal Affairs, or a law enforcement agency under ss. 287.137 and 501.2041, Florida Statutes, 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. 501.172, Florida Statutes, or antitrust laws may result in an investigation of such violations. The premature release of such investigatory information could frustrate or thwart the investigation and impair the ability of the Attorney General and the Department of Legal Affairs to effectively and efficiently administer ss. 287.137 and 501.2041, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) 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 and the Attorney General would undo the specific statutory exemption protecting that information.

(3) An investigation of social media platform activities is likely to result in the gathering of personal identifying information that could be used for the purpose of identity theft. For this reason, personal identifying information should remain confidential and exempt once an investigation is completed or ceases to be active.

(4) Information received by the Attorney General and the Department of Legal Affairs may contain proprietary business information, including trade secrets. Through such information, including trade secrets, a business derives independent, economic value, actual or potential, from the information 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 business information, including trade secrets, through a public records request could destroy the value of the proprietary business information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary business information in the marketplace.

(5) Information received by the Attorney General and the Department of Legal Affairs may contain a computer forensic report or information that could reveal weaknesses in a business' data security. The release of this information could result in the identification of vulnerabilities in the business' cybersecurity system and be used to harm the business and the business' clients. For this reason, a computer forensic report and information that could reveal weaknesses in a business' data security should remain

confidential and exempt once an investigation is completed or ceases to be active.

(6) The Legislature finds that the harm that may result from the release of information received by the Attorney General and the Department of Legal Affairs pursuant to an investigation by the Attorney General, the Department of Legal Affairs, or a law enforcement agency under ss. 287.137 and 501.2041, Florida Statutes, could impair the effective and efficient administration of these investigations and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 4. This act shall take effect July 1, 2021, if SB 7072 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 May 24, 2021.

Filed in Office Secretary of State May 24, 2021.