

CHAPTER 2023-235

Committee Substitute for House Bill No. 1327

An act relating to public records; amending s. 119.071, F.S.; providing definitions; providing an exemption from public records requirements for investigative genetic genealogy information and materials; authorizing the disclosure of such information and materials in certain circumstances; providing retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (r) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(r)1. As used in this paragraph, the term:

a. “DNA record” means all information associated with the collection and analysis of a person’s DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile, and includes a single nucleotide polymorphism and a whole genome sequencing DNA profile.

b. “Genetic genealogy” means the use of DNA testing in combination with traditional genealogical methods to infer relationships between persons and determine ancestry.

c. “Investigative genetic genealogy” means the application of genetic genealogy and law enforcement investigative techniques to develop investigative leads in unsolved violent crimes and provide investigative leads as to the identity of unidentified human remains and living unidentified missing persons.

d. “Investigative genetic genealogy information and materials” means the information, records, and DNA records created or collected by or on behalf of a law enforcement agency conducting investigative genetic genealogy research, and includes the names and personal identifying information of persons identified through the use of genealogy databases, traditional genealogical methods, or other investigative means. The term does not include the name or personal identifying information of:

(I) The donor of a biological sample attributable to a perpetrator; or

(II) A person identified through investigative genetic genealogy who is a witness to or has personal knowledge related to the crime under investigation.

e. “Traditional genealogical methods” means the use of genealogical databases and historical records to trace the family lineage of a person.

2. Investigative genetic genealogy information and materials are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Notwithstanding subparagraph 2., a law enforcement agency:

a. May disclose investigative genetic genealogy information and materials in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

b. Shall disclose investigative genetic genealogy information and materials pursuant to a court order for furtherance of a criminal prosecution. If a court orders the disclosure of such information and materials, the recipient of the information and materials must maintain the confidential and exempt status of the information and materials and may only publicly disclose the information and materials as necessary for purposes of a criminal prosecution as determined by the court.

4. The exemption in this paragraph applies to investigative genetic genealogy information and materials held by an agency before, on, or after July 1, 2023.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that investigative genetic genealogy information and materials be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigative genetic genealogy is an advanced investigative tool that uses law enforcement agency investigative resources and traditional genealogical research in collaboration with crime laboratories, private vendor laboratories, and companies and organizations that provide genealogy services and information to the public. Investigative genetic genealogy allows law enforcement to generate investigative leads on unknown perpetrators. Such investigative leads aid law enforcement in determining potential donors of crime scene samples, which can be confirmed or refuted by a crime laboratory for use in legal proceedings. Convictions and exonerations have been aided by the use of investigative genetic genealogy. The same techniques are also used in missing persons and unidentified human remains cases. Investigative genetic genealogy is a

valuable tool to solve violent crimes and hold accountable perpetrators who may otherwise roam freely and undetected in society. Traditional forensic DNA testing attempts to identify the possible donor of a crime scene sample through matches in law enforcement DNA databases comprised of short tandem repeat DNA databases. The use of investigative genetic genealogy differs from traditional law enforcement investigative techniques because it uses advanced DNA testing in order to develop an SNP or a WGS profile from unknown crime scene DNA. Profiles consisting of SNP data from various locations in a genome are made up of letters representing the building blocks of DNA and, depending on the locations tested, may reveal information on physical characteristics, disease predisposition, and susceptibility to environmental factors such as toxins or drugs. A WGS profile represents the entirety of a person's DNA and the traits, health, and ancestry information the DNA contains. Such SNP or WGS profiles are then uploaded into public genealogy databases and used to locate personal identifying information for possible relatives and ancestors who participate in the databases. Persons whose names, contact information, and other family associations are available in these databases routinely have no association with or knowledge of the perpetrator or the crime law enforcement is investigating. The first publicized use of investigative genetic genealogy involved the Golden State Killer case in California. The publicity surrounding law enforcement's use of genetic genealogy led genealogy service providers, genealogical testing companies, privacy advocates, and ethicists to express privacy concerns. Private companies have since strictly limited or precluded law enforcement access to genetic genealogy databases due to fear that persons biologically related to a perpetrator but unassociated with the crime may be identified, harassed, and even victimized. Law enforcement use has been restricted to violent crimes and unidentified human remains, and companies employ opt-in features for customers. Failure to properly protect and limit the disclosure of investigative genetic genealogy materials will hinder the ability of law enforcement to use investigative genetic genealogy to solve violent crimes and provide closure to the family members of victims of these heinous acts. Unidentified human remains are often homicide victims, so protection of investigative genetic genealogy tools and information is important in giving names to these victims as well.

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor June 14, 2023.

Filed in Office Secretary of State June 14, 2023.