

2-E-1 | CREATION OF EXEMPTIONS

"Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." Board of County Commissioners of Palm Beach County v. D.B., 784 So. 2d 585, 591 (Fla. 4th DCA 2001). Wait v. Florida Power and Light Company, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). Accord Wait v. Florida Power and Light Company, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). See s. 119.011(8), F.S., defining the term "exemption" to mean "a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution."

Article I, s. 24(c), Fla. Const., authorizes the Legislature to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." "The Constitution allows for the legislature, not the courts to provide for exceptions to the public records act." Cruz v. State, 297 So. 3d 154 (Fla. 4th DCA 2019). See Halifax Hospital Medical Center v. News-Journal Corporation, 724 So. 2d 567 (Fla. 1999) (statute providing an exemption from the Sunshine Law for portions of hospital board meetings is unconstitutional because it does not meet the constitutional standard of specificity as to stated public necessity and it is broader than necessary to achieve its purpose). Compare Memorial Hospital-West Volusia v. News-Journal Corporation, 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in article I, section 24(c) of the Florida Constitution." And see Campus Communications, Inc. v. Earnhardt, 821 So. 2d 388, 395 (Fla. 5th DCA 2002), review denied, 848 So. 2d 1153 (Fla. 2003) (statutory exemption for autopsy photographs serves identifiable public purpose and is no broader than necessary to meet that public purpose); Bryan v. State, 753 So. 2d 1244 (Fla. 2000) (statute exempting from public disclosure certain prison records satisfies the constitutional standard because the Legislature set forth the requisite public necessity [personal safety of prison officials



and inmates] for the exemption); and State, Department of Financial Services v. Danahy & Murray, P.A., 246 So. 3d 466 (Fla. 1st DCA 2018) (distinguishing Halifax and finding that a statute exempting certain information held by the Department of Financial Services under the Florida Insurance Code met the constitutional standard in Article I s. 24[c], Fla. Const.).

Laws enacted pursuant to Art. I, s. 24, Fla. Const., shall relate to one subject and must contain only exemptions or provisions governing enforcement. Cf. State v. Knight, 661 So. 2d 344 (Fla. 4th DCA 1995) (while exemptions when enacted must contain a public necessity statement, exceptions to an exemption are not required to contain such a statement; thus, a trial judge erred in overturning a statute providing a limited exception to the public records exemption for grand jury materials).

Article I, s. 24(c) also requires that laws providing exemptions from public records or public meetings requirements must be passed by a two-thirds vote of each house. The two-thirds vote requirement applies when an exemption is readopted in accordance with the Open Government Sunset Review Act, s. 119.15, F.S., as well as to the initial creation of an exemption. AGO 03-18.

In accordance with s. 24(d), all statutory exemptions in effect on July 1, 1993, are grandfathered into the statutes and remain in effect until they are repealed. Rules of court in effect on November 3, 1992, that limit access to records remain in effect until repealed. See Rule 2.420, Fla. R. Gen. Prac & Jud. Admin. (originally adopted by the Florida Supreme Court on October 29, 1992, as Rule 2.051, and subsequently renumbered in 2006 as Rule 2.420). Rule 2.420 may be accessed online at www.floridabar.org.

The Open Government Sunset Review Act, codified at s. 119.15, F.S., provides for the review and repeal or reenactment of an exemption from s. 24, Art. I, Fla. Const., and s. 119.07(1), or s. 286.011, F.S. The act does not apply to an exemption that is required by federal law or applies solely to the Legislature or the State Court System. Section 119.15(2)(a) and (b), F.S. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S.

(Florida Office of the Attorney General // © March 9, 2023)

