

By: Moody

H.B. No. 2383

A BILL TO BE ENTITLED

AN ACT

relating to access to certain law enforcement, corrections, and prosecutorial records under the public information law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.13952 to read as follows:

Art. 2.13952. PUBLIC DATABASE. The office of the attorney general shall establish and maintain on its Internet website a publicly accessible database of reports submitted to the office under Articles 2.139 and 2.1395.

SECTION 2. Section 411.00755(b), Government Code, is amended to read as follows:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

(A) a commendation, congratulation, or honor bestowed on the officer for an action, duty, or activity that relates to the officer's official duties; and

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action;

(2) the state application for employment submitted by the officer, but not including any attachments to the application;

- 1 (3) any reference letter submitted by the officer;
- 2 (4) any letter of recommendation for the officer;
- 3 (5) any employment contract with the officer;
- 4 (6) any periodic evaluation of the officer by a
5 supervisor;
- 6 (7) any document recording a promotion or demotion of
7 the officer;
- 8 (8) any request for leave by the officer;
- 9 (9) any request by the officer for transfers of shift
10 or duty assignments;
- 11 (10) any documents presented to the commission in
12 connection with a public hearing under Section 411.007(f);
- 13 (11) the officer's:
 - 14 (A) name;
 - 15 (B) age;
 - 16 (C) dates of employment;
 - 17 (D) positions held; and
 - 18 (E) gross salary; ~~and~~
- 19 (12) information about the location of the officer's
20 department duty assignments;
- 21 (13) a force report, incident report, extraordinary
22 occurrence report, emergency action report, Taser use report, or
23 any other report made by the officer concerning the use of force or
24 firearms by the officer or witnessed by the officer, and any log or
25 database tracking or compiling those reports by one or more
26 officers regardless of whether the officer making the report is
27 identified; and

1 (14) a fleet occurrence report or any other report
2 made by an officer concerning physical or property damage caused by
3 a department vehicle, and any log or database tracking or compiling
4 those incidents or reports.

5 SECTION 3. Section 552.108, Government Code, is amended by
6 amending Subsection (c) and adding Subsections (d), (e), and (f) to
7 read as follows:

8 (c) This section does not except from the requirements of
9 Section 552.021:

10 (1) information that is basic information about an
11 arrested person, an arrest, [~~or~~] a crime, or a criminal
12 investigation; and

13 (2) basic information contained in:

14 (A) a search warrant;

15 (B) testimony, an affidavit, or other
16 information used to support a finding of probable cause to execute a
17 search warrant;

18 (C) an arrest warrant, an arrest report, an
19 incident report, or an accident report;

20 (D) a mug shot;

21 (E) a report relating to:

22 (i) an officer-involved shooting; or

23 (ii) an incident involving the discharge of
24 a firearm by a peace officer, including the unintentional discharge
25 of a firearm in the course of duty or in response to a call,
26 regardless of whether:

27 (a) a person is hit by gunfire; or

1 (b) an allegation of misconduct is
2 made;

3 (F) a report relating to a peace officer's use of
4 force resulting in death or serious bodily injury as defined by
5 Section 1.07, Penal Code; or

6 (G) a report related to the death or serious
7 bodily injury of an arrestee or detainee while the person is in the
8 custodial care of a law enforcement agency.

9 (d) The exceptions to disclosure provided by Subsections
10 (a)(2) and (b)(2) do not apply to information, records, or
11 notations if:

12 (1) a person who is a subject of the information,
13 record, or notation, other than a peace officer, is deceased or
14 incapacitated; or

15 (2) each person who is a subject of the information,
16 record, or notation consents to the release of the information,
17 record, or notation.

18 (e) This section does not except from the requirements of
19 Section 552.021 a letter, memorandum, or document regarding a peace
20 officer's alleged misconduct in the peace officer's personnel file
21 under Section 143.089, Local Government Code, if:

22 (1) a person who is a subject of the letter,
23 memorandum, or document, other than the peace officer, is deceased
24 or incapacitated; or

25 (2) each person who is a subject of the letter,
26 memorandum, or document consents to the release of the letter,
27 memorandum, or document.

1 (f) A governmental body that releases information, records,
2 or notations to a family member of a deceased or incapacitated
3 person who is a subject of the information, record, or notation is
4 not considered to have voluntarily made that information available
5 to the public for purposes of Section 552.007 and does not waive the
6 ability to assert in the future that the information is excepted
7 from required disclosure under this section or other law.

8 SECTION 4. Subchapter B, Chapter 552, Government Code, is
9 amended by adding Section 552.030 to read as follows:

10 Sec. 552.030. RIGHT OF ACCESS TO VIDEO RECORDINGS OF
11 CRITICAL LAW ENFORCEMENT INCIDENTS. (a) In this section,
12 "critical incident":

13 (1) includes:

14 (A) an officer-involved shooting, including an
15 unintentional discharge of a firearm while in the course of duty or
16 in response to a call, regardless of whether:

17 (i) a person is hit by gunfire; or

18 (ii) an allegation of misconduct is made;

19 (B) use of force resulting in death or serious
20 bodily injury as defined by Section 1.07, Penal Code;

21 (C) the death of an arrestee or detainee while
22 the person is in the custodial care of a law enforcement agency; and

23 (D) any other police encounter in which a law
24 enforcement agency determines release of a video recording furthers
25 a law enforcement purpose; and

26 (2) does not include:

27 (A) an officer-involved shooting of an animal;

1 (B) an unintentional discharge of a firearm
2 during a pre-shift equipment check; or

3 (C) the discharge of a firearm during training or
4 qualifications on a firing range.

5 (b) Not later than the 60th day after the date a critical
6 incident occurs, a law enforcement agency shall make public any
7 video recording in the agency's possession involving the critical
8 incident.

9 (c) Except as otherwise provided by this subsection, a law
10 enforcement agency shall, not later than the 60th day after the date
11 a critical incident occurs, begin providing copies of a video
12 recording of the critical incident to persons who request a copy.
13 If the law enforcement agency determines the video recording cannot
14 be released as required by this subsection, the agency shall, not
15 later than the 45th day after the date the critical incident occurs,
16 begin notifying persons who request a copy of the video recording of
17 the reasons for the agency's decision and providing an explanation
18 as to when the agency will make copies of the video recording
19 available to requestors.

20 (d) Section 552.108 does not apply to a video recording of a
21 critical incident in a law enforcement agency's possession.

22 (e) The video recordings to which Subsections (b) and (c)
23 apply include body worn camera video recordings, digital in-car
24 video recordings, other video recordings captured by a law
25 enforcement agency, and video recordings captured by a third party
26 that are in a law enforcement agency's possession.

27 (f) A law enforcement agency may withhold a video recording

1 of a critical incident if the agency is prohibited from releasing
2 the recording by law or a court order. The agency may redact or edit
3 the video recording to protect juveniles and victims of certain
4 crimes or to protect the privacy interests of other individuals who
5 appear in the recording. The agency may not redact or edit a video
6 recording in a manner that compromises the depiction of what
7 occurred during the critical incident, including the officers
8 involved in the incident.

9 (g) A law enforcement agency may delay the release of a
10 video recording of a critical incident to protect:

11 (1) the safety of the individuals involved in the
12 critical incident, including officers, witnesses, bystanders, or
13 other third parties;

14 (2) the integrity of an active criminal or
15 administrative investigation or a criminal prosecution;

16 (3) confidential sources or investigative techniques;

17 or

18 (4) the constitutional rights of an accused.

19 (h) If a law enforcement agency determines that Subsection
20 (g) applies to a video recording of a critical incident, the agency
21 shall:

22 (1) not later than the 45th day after the date the
23 critical incident occurs, begin notifying persons who request a
24 copy of the recording of the specific, factual reasons for the
25 delay; and

26 (2) update persons who request a copy of the recording
27 every 15 days regarding the continuing justification for the delay

1 until the copies are released.

2 (i) Not later than 48 hours before the time a law
3 enforcement agency releases a video recording of a critical
4 incident, the agency shall make a reasonable attempt to notify and
5 consult with:

6 (1) the officers depicted in the recording or
7 significantly involved in the use of force;

8 (2) the individual upon whom force was used or the
9 individual's:

10 (A) next of kin if the individual is deceased;

11 (B) parent or legal guardian if the individual is
12 a juvenile; or

13 (C) legal counsel if the individual is
14 represented by legal counsel;

15 (3) the district attorney's office, county attorney's
16 office, or city attorney's office that has jurisdiction over the
17 critical incident depicted in the video; and

18 (4) any other individual or entity connected to the
19 critical incident the law enforcement agency deems appropriate.

20 SECTION 5. Section 143.089, Local Government Code, is
21 amended by amending Subsection (g) and adding Subsection (h) to
22 read as follows:

23 (g) A fire or police department may maintain a personnel
24 file on a fire fighter or police officer employed by the department
25 to store sensitive personal information, including the
26 individual's home address, home telephone number, personal
27 cellular telephone number, emergency contact information, social

1 security number, personal financial information, information that
2 reveals whether the person has family members, and any other
3 personal information the disclosure of which would constitute a
4 clearly unwarranted invasion of personal privacy. The [~~for the~~
5 ~~department's use, but the~~] department may not release any
6 information contained in the department file to any agency or
7 person requesting information relating to a fire fighter or police
8 officer, other than information in a police officer's personnel
9 file relating to a police officer's alleged misconduct, as
10 permitted by Section 552.108, Government Code. The department
11 shall refer to the director or the director's designee a person or
12 agency that requests information that is maintained in the fire
13 fighter's or police officer's personnel file.

14 (h) Notwithstanding any other law, a fire or police
15 department shall disclose law enforcement disciplinary record
16 information reasonably necessary to identify an allegation against
17 a fire fighter or police officer that resulted in a sustained
18 finding of misconduct, including:

19 (1) any record created in furtherance of a law
20 enforcement disciplinary proceeding;

21 (2) each complaint, allegation, and charge against the
22 employee;

23 (3) the name of the employee complained of or charged;

24 (4) the transcript of any disciplinary trial or
25 hearing, including any exhibit introduced at the trial or hearing;

26 (5) the disposition of any disciplinary proceeding;

27 and

1 (6) the final written opinion or memorandum supporting
2 the disposition and discipline imposed, including the agency's:

3 (A) complete factual findings; and

4 (B) analysis of the conduct and appropriate
5 discipline of the covered employee.

6 SECTION 6. Section 1701.651(1), Occupations Code, is
7 amended to read as follows:

8 (1) "Body worn camera" means a recording device that
9 is:

10 (A) capable of recording, or transmitting to be
11 recorded remotely, video and ~~or~~ audio simultaneously; and

12 (B) worn on the person of a peace officer, which
13 includes being attached to the officer's clothing or worn as
14 glasses.

15 SECTION 7. Sections 1701.661(a) and (b), Occupations Code,
16 are amended to read as follows:

17 (a) For purposes of Chapter 552, Government Code,
18 information recorded by a body worn camera is considered to be a
19 video representation held in computer memory ~~[A member of the~~
20 ~~public is required to provide the following information when~~
21 ~~submitting a written request to a law enforcement agency for~~
22 ~~information recorded by a body worn camera:~~

23 ~~[(1) the date and approximate time of the~~
24 ~~recording,~~

25 ~~[(2) the specific location where the recording~~
26 ~~occurred, and~~

27 ~~[(3) the name of one or more persons known to be a~~

1 ~~subject of the recording].~~

2 (b) A law enforcement agency shall treat a written request
3 for ~~[failure to provide all of the]~~ information recorded ~~[required]~~
4 by a body worn camera as ~~[Subsection (a) to be part of]~~ a request for
5 public ~~[recorded]~~ information under Chapter 552, Government Code
6 ~~[does not preclude the requestor from making a future request for~~
7 ~~the same recorded information].~~

8 SECTION 8. Section 1701.661(f), Occupations Code, is
9 repealed.

10 SECTION 9. The changes in law made by this Act apply to
11 information produced or maintained before, on, or after the
12 effective date of this Act.

13 SECTION 10. This Act takes effect September 1, 2021.