

BILL ANALYSIS

C.S.H.B. 1422
By: Driver
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law allows the personnel records and personal information of officers of the Department of Public Safety to be released under Chapter 552 of the Government Code, the public information law. Only a few items such as Social Security numbers, family information and address are protected from disclosure. Further, such information is not available in court proceedings unless found to be relevant by a judge under the rules of criminal procedure.

However, it has become a common practice for defendants to circumvent this process by making an open records request to the employing agency for any and all information related to the arresting officer under public information laws.

C.S.H.B. 1422 limits the types of information maintained in a commissioned officer's personnel records that are subject to public release. Only the types of information listed in the new provisions may be released. This would be similar to the provisions protecting personnel records at most local law enforcement agencies under the civil service provisions of the Local Government Code.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0755, as follows:

Sec. 411.00755. PERSONNEL RECORDS OF COMMISSIONED OFFICERS.

(a) Defines terms used in this section.

(a)(1) Defines "personnel record" to include any letter, memorandum, or document maintained by the department that relates to a commissioned officer of the department, including background investigations, employment applications, employment contracts, service and training records, requests for off-duty employment, birth records, reference letters, letters of recommendation, performance evaluations and counseling records, results of physical tests, polygraph questionnaires and results, proficiency tests, the results of health examinations and other medical records, workers' compensation files, the results of psychological examinations, leave requests, requests for transfers of shift or duty assignments, commendations, promotional processes, demotions, complaints and complaint investigations, employment-related grievances, and school transcripts.

(a)(2) Defines "disciplinary action" as having the meaning assigned by Section 411.0072 (a) (1).

(b) Provides that, notwithstanding Chapter 552, the personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, with the exception of the following information pertaining the officer which the Department of Public Safety is required to release: any letter, memorandum, or document relating to a commendation, congratulation, or honor bestowed on the officer

for an action, duty, or activity that relates to the officer's official duties; any letter, memorandum, or document relating to any misconduct by the officer if the letter, memorandum, or document resulted in disciplinary action; the state application for employment submitted by the officer, but not including any attachments to the application; any reference letter submitted by the officer; any letter of recommendation for the officer; any employment contract with the officer; any periodic evaluation of the officer by a supervisor; any document recording a promotion or demotion; any requests for leave by the officer; any requests by the officer for transfers of shift or duty assignments; any documents presented to the Public Safety Commission in connection with a public hearing under Section 411.007 (f), Government Code; name, age, dates of employment, positions held, gross salary; information about the location of the officer's department duty assignments.

(c) Authorizes the department to release any personnel record of a commissioned officer pursuant to a subpoena or court order, including a discovery order, for use by the department in an administrative hearing or with the written authorization of the officer who is the subject of the record.

(d) Specifies that a release of information under Subsection (c) does not waive the right to assert in the future that the information is excepted from required disclosure under this section or other law.

SECTION 2: Makes conforming changes.

SECTION 3. Effective Date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original bill in SECTION 1 in that the substitute assigns "disciplinary action" the meaning assigned by Government Code Section 411.0072 (a) (1) whereas the original assigns "disciplinary action" the meaning assigned by Government Code Section 411.0072 (1).

The substitute also differs in SECTION 1 in that the amendment made to Government Code Section 411.00755 (b) lists "age" whereas the original listed "date of birth" as information which may be disclosed.

In addition, the following items are required by the substitute to be disclosed or otherwise made available to the public: any letter, memorandum, or document relating to a commendation, congratulation, or honor bestowed on the officer for an action, duty, or activity that relates to the officer's official duties; any letter, memorandum, or document relating to misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action; the state application for employment submitted by the officer, but not including any attachments to the application; any reference letter submitted by the officer; any letter of recommendation for the officer; any employment contract with the officer; the periodic evaluation of the officer by a supervisor; any document recording a promotion or demotion of the officer; any requests for leave by the officer; any requests by the officer for transfers of shift or duty assignments.