87R5219 MCK-D

By:  West S.B. No. 975

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;

(3)  any reference letter submitted by the officer;

(4)  any letter of recommendation for the officer;

(5)  any employment contract with the officer;

(6)  any periodic evaluation of the officer by a supervisor;

(7)  any document recording a promotion or demotion of the officer;

(8)  any request for leave by the officer;

(9)  any request by the officer for transfers of shift or duty assignments;

(10)  any documents presented to the commission in connection with a public hearing under Section 411.007(f);

(11)  the officer's:

(A)  name;

(B)  age;

(C)  dates of employment;

(D)  positions held; and

(E)  gross salary; [~~and~~]

(12)  information about the location of the officer's department duty assignments;

(13)  a force report, incident report, extraordinary occurrence report, emergency action report, Taser use report, or any other report made by the officer concerning the use of force or firearms by the officer or witnessed by the officer, and any log or database tracking or compiling those reports by one or more officers regardless of whether the officer making the report is identified; and

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

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

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

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

(2)  basic information contained in:

(A)  a search warrant;

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

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

(D)  a mug shot;

(E)  a report relating to:

(i)  an officer-involved shooting; or

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

(a)  a person is hit by gunfire; or

(b)  an allegation of misconduct is made;

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

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

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

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

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

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

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

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

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

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

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

(1)  includes:

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

(i)  a person is hit by gunfire; or

(ii)  an allegation of misconduct is made;

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

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

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

(2)  does not include:

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

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

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

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

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

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

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

(f)  A law enforcement agency may withhold a video recording of a critical incident if the agency is prohibited from releasing the recording by law or a court order. The agency may redact or edit the video recording to protect juveniles and victims of certain crimes or to protect the privacy interests of other individuals who appear in the recording. The agency may not redact or edit a video recording in a manner that compromises the depiction of what occurred during the critical incident, including the officers involved in the incident.

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

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

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

(3)  confidential sources or investigative techniques; or

(4)  the constitutional rights of an accused.

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

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

(2)  update persons who request a copy of the recording every 15 days regarding the continuing justification for the delay until the copies are released.

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

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

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

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

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

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

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

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

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

(g)  A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department to store sensitive personal information, including the individual's home address, home telephone number, personal cellular telephone number, emergency contact information, social security number, personal financial information, information that reveals whether the person has family members, and any other personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The [~~for the department's use, but the~~] department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer, other than information in a police officer's personnel file relating to a police officer's alleged misconduct, as permitted by Section 552.108, Government Code. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

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

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

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

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

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

(5)  the disposition of any disciplinary proceeding; and

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

(A)  complete factual findings; and

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

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

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

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

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

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

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

[~~(1)  the date and approximate time of the recording;~~

[~~(2)  the specific location where the recording occurred; and~~

[~~(3)  the name of one or more persons known to be a subject of the recording~~].

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

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

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

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