

SUBJECT: Access to photographs maintained by internal investigative divisions

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 9 ayes — Dutton, Alvarado, Callegari, Gutierrez, P. King, Mallory  
Caraway, Parker, Paxton, Simpson

0 nays

WITNESSES: For — Jessica Sloman, Houston Police Department; (*Registered, but did not testify*: Melinda Griffith, Combined Law Enforcement Associations of Texas (CLEAT))

Against — Keith Elkins, Freedom of Information Foundation of TX; Michael Schneider, Texas Association of Broadcasters; Doug Toney, Daily Newspaper Association, Texas Press Association, New Braunfels Herald-Zeitung)

BACKGROUND: Under Government Code, sec. 552.119, a photograph of a peace officer is exempt from release when the release of the photo would endanger the life or safety of the officer unless:

- the officer is under indictment or charged with an offense by information;
- the officer is a party in a civil service hearing or a case in arbitration; or
- the photograph is introduced as evidence in a judicial proceeding.

An exempted photograph can be made public only with written permission from the peace officer.

Under Local Government Code, sec. 143.1214, certain records of disciplinary action taken against a firefighter or police officer are expunged from each file maintained on the firefighter or police officer if the disciplinary action was entirely overturned on appeal. Records of an internal affairs division are not required to be expunged.

**DIGEST:** HB 2006 would specify that when certain records of disciplinary action taken against a firefighter or police officer were expunged from each file maintained on the firefighter or police officer if the disciplinary action was entirely overturned on appeal, records of an internal affairs division or other similar internal investigative division would not be required to be expunged.

The bill would apply the exceptions for release of peace officer photographs in Government Code, sec. 552.119 to release of police officer photographs in Local Government Code, ch. 143, by prohibiting a department, commission, or municipality from releasing a photograph that depicted a police officer unless:

- the officer had been charged with an offense by indictment or by information;
- the officer was a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- the photograph was introduced as evidence in a judicial proceeding; or
- the officer gave written consent to the release of the photograph.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

This bill would protect police officers, particularly those who are undercover or may become undercover in the future, and their families by preventing the illegitimate release of an officer's photograph.

Although photographs of police officers are exempt from being released under the Public Information Act, a recent attorney general ruling has been interpreted to require the release of a photograph unless the law enforcement department can provide written proof that the release would endanger the officer. HB 2006 would restore the original intent of the Legislature.

Releasing photographs can jeopardize ongoing criminal investigations and inhibit the officer's ability to perform his or her duties. HB 2006 would restrict the release of these photos to only four circumstances. The bill would allow the release of photos for particular purposes while protecting an officer from having a photo released for illegitimate reasons. The exceptions found in the bill would provide an adequate balance between the freedom of information and the safety and security of officers.

Open records requests by the media for large numbers of official photographs require an individual affidavit for each officer to prevent the release of their photograph. The collection process for the law enforcement department to gather these affidavits is labor intensive and burdensome.

The bill would protect only photographs of police officers and would not extend to video.

OPPONENTS  
SAY:

HB 2006 is unnecessary because there already are adequate protections for police officers who may be endangered by the release of a photograph under the Public Information Act. The current provision was adopted by lawmakers to balance law enforcement transparency with officer safety. It has worked well for almost two decades, and there is no justification for changing it now.

If the main concern is to protect undercover officers, HB 2006 should be more restrictive. The bill is too broad, and should be more narrowly defined to identify the applicable circumstances.

Unless an officer already had approved the release of his or her photograph, HB 2006 would prohibit a municipality from releasing an officer's photograph in several circumstances, including when an officer was killed in the line of duty, honored for departmental service, or involved in a shooting incident under investigation.

HB 2006 could be read expansively by a court, leading to unintended consequences such as applying the bill to preventing the release of video of police officers.

NOTES:

The companion bill, SB 484 by Huffman, was referred to the Senate Intergovernmental Relations Committee on February 14.