
OLR Bill Analysis

sSB 431

AN ACT CONCERNING FEES FOR COPYING, REVIEWING AND REDACTING RECORDS CREATED BY POLICE BODY-WORN RECORDING EQUIPMENT AND DASHBOARD CAMERAS.

SUMMARY

This bill sets additional requirements for redacting and disclosing body and dashboard camera recordings. It expands the types of recordings that must be redacted to include certain recordings showing the inside of a private residence or an individual in a state of undress or nudity. However, it allows certain recordings that are otherwise generally confidential (e.g., those showing medical treatment) to be disclosed to requestors shown in the recording or involved in the incident that led to the recording.

The bill also allows public agencies to charge a fee for redacting (i.e., obscuring, pixelating, or muting) body and dashboard camera recordings and sets requirements for calculating the fee. Among other things, the agency may charge a rate up to the hourly wage of the lowest-paid employee with the training required for redacting the record, but no more than \$100 per hour for the actual length of time of the requested record.

However, an agency may not charge a fee when the requestor is an involved person in the requested record. Under the bill, an “involved person” is any (1) individual depicted in a body or dashboard camera recording; (2) individual directly involved in the incident that led to the police officer being called to respond; or (3) responding police officer, including the officer who created the recording. An agency also may not charge a redaction fee for (1) the first two hours of labor, or the first four hours for certain requestors, and (2) recordings showing certain incidents (e.g., a police officer-involved shooting). The bill requires the

agency to maintain an original, unredacted copy of any requested record that is redacted for public dissemination.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2024

DISCLOSURE OF BODY CAMERA RECORDINGS

Additional Disclosure Requirements

Existing law generally subjects body and dashboard camera recordings to disclosure under the Freedom of Information Act (FOIA), with certain exceptions. Among other things, current law (1) prohibits officers from intentionally recording a person undergoing a medical or psychological evaluation, procedure, or treatment, unless the recording was made as part of an agreement between the law enforcement unit and the federal government; and (2) makes confidential any recording showing these events. The bill requires that recordings showing these events be disclosed to an involved person or requesting party if they show the involved person or requesting party.

With certain exceptions, existing law generally prohibits disclosing recordings of a minor. Under current law, a recording of a minor must be disclosed if, among other things, the minor and his or her parent or guardian consent to disclosure. The bill additionally requires disclosure if the (1) minor is an involved person and (2) parent or guardian is a requesting party or also an involved person.

Additional Redaction Requirements

The bill requires that body and dashboard camera recordings be redacted before being disclosed under FOIA if (1) they show the inside of a private residence or an individual in a state of undress or nudity and (2) the agency determines disclosure could reasonably be expected to constitute an invasion of privacy. Under the bill, these records may be disclosed (presumably, unredacted) to a requesting party or involved person if (1) the inside of his or her residence is shown in the recording or (2) he or she is shown in a state of undress or nudity.

The bill also requires redaction for body and dashboard camera

recordings of any of the following, which by law, are confidential and generally exempt from disclosure under FOIA:

1. communications with other law enforcement unit personnel, except those that may be recorded as the officer performs his or her duties;
2. encounters with undercover officers, informants, or officers performing certain detective work;
3. officers on break or otherwise engaged in a personal activity;
4. someone undergoing a medical or psychological evaluation, procedure, or treatment;
5. anyone other than a criminal suspect if an officer is wearing the equipment in a hospital or other medical facility;
6. a mental health facility, unless responding to a call involving a criminal suspect thought to be present in the facility;
7. scenes of an incident that involves victims of domestic or sexual abuse, homicide or suicide, or a fatal accident, if disclosure could reasonably be expected to constitute an unwarranted invasion of the victim's personal privacy; or
8. a minor.

REDACTION FEES

Fee Calculation

Under existing law, fees for copies of public records (including body and dashboard camera recordings) are set by FOIA unless the law provides otherwise (see BACKGROUND). Generally, FOIA does not allow public agencies to charge requestors for the time spent redacting a record.

The bill generally allows public agencies to charge requestors a fee for their time spent redacting body camera or dashboard camera recordings if it takes more than two hours to do so. However, if the

requesting party is an involved person's parent or legal guardian, or an attorney representing an involved person in a civil, criminal, or administrative matter, then the agency cannot charge a fee for the first four hours to do the redacting.

If the redacting takes longer than the applicable threshold, the bill allows an agency to charge a rate up to the hourly wage (i.e., base salary excluding benefits) of the lowest-paid employee with the requisite training for redacting the record. The bill prohibits agencies from charging for (1) time spent searching for the requested records, (2) an attorney hired to conduct a second review of the record, or (3) a digital management company's services.

Under the bill, the redaction fee may not exceed \$100 per hour for the actual length of time of the requested record. The agency may round up the actual length of time to the nearest half-hour at the rate of \$50 per hour. Agencies (1) must inform the requestor if the fee is estimated to exceed \$250, (2) may require prepayment in these cases, and (3) must refund any portion of a prepayment that exceeds the actual labor costs. The bill allows the Freedom of Information Commission (FOIC) to order a refund of a payment or prepayment if it determines that a public agency violated the bill's fee provisions.

Fee Prohibitions and Waivers

The bill prohibits public agencies from charging a redaction fee to a requesting party who is an involved person in the requested record. It also prohibits fees from being charged:

1. for records that depict a police officer (a) involved in a shooting or motor vehicle accident or (b) giving a formal statement about the use of force or
2. if there is an allegation of misconduct by the police officer involved or the officer is the subject of a disciplinary investigation.

The bill specifies that these records remain subject to the disclosure limitations under current law and the bill.

The bill also requires agencies to waive the redaction fee for the same reasons that FOIA requires for waiving copying fees. FOIA requires fee waivers for (1) political subdivisions' elected officials who obtain, for official business, records from an agency of the subdivision; (2) indigent people; (3) public defenders; (4) records exempt from disclosure; and (5) requests that benefit the general welfare, as determined by the agency.

BACKGROUND

FOIA Fees

FOIA allows public agencies to charge the following for producing copies of computer-stored public records:

1. the hourly salary attributed to all agency employees engaged in providing the requested record, including their time performing necessary formatting or programming functions, but not including search or retrieval costs;
2. the cost of an outside professional electronic copying service, if needed;
3. the actual cost of the storage devices or media provided to the requestor; and
4. computer time charges if a contractor or another agency provides the storage and retrieval services (CGS §§ 1-211(a) & -212(b)).

Related Case

In a contested case decided in 2023, FOIC rejected a law enforcement agency's attempt to charge a requestor for labor costs to pixelate and mute a body camera recording. Specifically, FOIC ruled that these actions were not formatting or programming within the meaning of FOIA's fee provisions (because the agency used existing software and did not need to develop a program or contract with an outside entity to develop a program) (FIC 2022-0176 (2023)).

Related Bill

sSB 234, favorably reported by the Public Safety and Security Committee, among other things, expands the FOIA disclosure

exemption for law enforcement agency records created in detecting or investigating crime that are not otherwise available to the public when disclosure would not be in the public interest, to include (1) the identity of mandated reporters not otherwise known and (2) sworn witness statements.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/22/2024)