

SUBJECT: Personnel records of law enforcement and fire protection personnel

COMMITTEE: Public Safety — favorable, with amendment

VOTE: 6 ayes — Oakley, Allen, Driver, Edwards, Luna, McCoulskey

2 nays — Carter, Madden

1 absent — Bailey

SENATE VOTE: On final passage, April 19 — voice vote

WITNESSES: None

DIGEST: SB 695, as amended, would require the governor to designate a state officer or employee as custodian to maintain a permanent personnel file on each law enforcement or fire protection employee employed by an agency of the state. Likewise, the governing body of each political subdivision would have to designate an officer or employee as custodian to maintain a permanent personnel file on each law enforcement or fire protection employee employed by the political subdivision. This requirement would not apply to Texas Department of Public Safety (DPS), municipal civil service officers or firefighters or employees of cities with a population of less than 10,000. The provisions would be in a new Subchapter E, Chapter 614, Government Code.

Records included in file. A law enforcement or fire protection employee's permanent personnel file would have to contain any employee record relating to a commendation, congratulation, honor bestowed, periodic evaluation, photograph, misconduct resulting in disciplinary action or misconduct pending and being investigated at the time the employee resigned.

Misconduct and disciplinary action. An employee record relating to alleged misconduct could not be placed in the permanent personnel file if the employer or the governing body determined that there was insufficient evidence to sustain the charge of misconduct, except for information

pertaining to an investigation of misconduct pending at the time the employee resigned.

An employee record relating to disciplinary action or alleged misconduct would have to be removed if the employer, a court, an administrative body or hearing examiner determined that the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. The custodian would ensure that all records required to be excluded would be excluded.

Notification and response to negative record. The custodian would have to notify an employee within 30 days after a negative record is included in the file. Within 15 days after receipt of the notification, the employee could file a written response to the negative record.

Entitled to records. A law enforcement or fire protection employee would be entitled, on request, to a copy of any employee record, for a reasonable fee.

Release of information. The employee would have to give written permission before the custodian could release any information contained in a file, unless the release is required by law. The employer could use a photograph of an employee without the employee's written permission for identification purposes.

Disposal of files. The custodian could dispose of files on former law enforcement or fire protection employees in accordance with the employer's policy and applicable law.

Private personnel files. An employer could maintain private personnel files on law enforcement or fire protection employees. The employer could not release information contained in the private file.

Penalty. A person who released an employee record without first obtaining the employee's written permission, or who released information from a private personnel file, would commit a Class C misdemeanor, punishable by a maximum penalty of a \$500 fine.

Civil service photographs. The bill would also amend the Local Government Code to add to the municipal civil service personnel file section that each photograph of a firefighter or police officer in the possession of the employing department or municipality would be considered part of that employee's personnel file. The employing department or municipality could release a photograph without written permission if for identification of the employee by a member of the public.

Effective date. The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 695 would standardize police officer and firefighter personnel file procedures across the state and would greatly benefit the subjects of these files. First, the bill would increase access of police officers and firefighters to their own personnel files. Today, many police officers do not know what negative information might be in their files.

The bill would require a custodian to give notice of negative information included in a file. In addition, police officers and firefighters would be able to rebut negative information included in the file. As it is now, the records do not reflect the officer's or firefighter's side of the story. Moreover, the bill would require that only substantiated negative information be included. Currently, mere allegations are included in files that might wrongfully damage a career. The bill would also require that any positive information, such as commendations, be included. These rules should ensure that a balanced picture of the officer's performance is represented in the records.

The bill would also still allow an agency to detect a "gypsy cop" by requiring that records on pending investigations of misconduct be included in a file if an officer resigns. This is important because these substandard officers leave positions before they can be fired and then apply for and obtain employment at law enforcement agencies in other cities. The bill would allow an agency to find out about alleged improper conduct in previous employment.

The bill would standardize the rules regarding personnel files for state and municipal officers and firefighters not covered by the standardized rules now in effect for police and firefighter personnel files in civil service

municipalities. The rules covering civil service municipalities have worked well, and standardization should be extended.

Logically, these rules would not cover civil service employees, except for the addition to the civil service rules on photographs. Nor would the rules cover police officers or firefighters employed by a town of less than 10,000 because of the paperwork generated by the requirements. However, any city over 10,000 should be keeping personnel records anyway, and so these requirements should not be burdensome. In any event, the interests of the firefighters and police officers deserve to be addressed.

**OPPONENTS
SAY:**

The rules mandated by SB 695 would expand record keeping requirements beyond reason, and would create an undue burden on the cities and agencies affected. A city or agency would have to sift through files to cull unnecessary records and would spend an inordinate amount of time trying to decide which records should stay in the file. The notice requirements would also be burdensome.

In addition, the bill would create security problems for the custodians who would have to carefully guard the files lest any files get into unauthorized hands. The custodian could be fined \$500 for mistakenly releasing information.

NOTES:

The committee amendment would exempt the DPS from the provisions of the bill.