

CHAPTER 2016-214

Senate Bill No. 7022

An act relating to a review under the Open Government Sunset Review Act; amending s. 406.136, F.S., which provides an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; narrowing the exemption to depictions or recordings of the killing of a law enforcement officer who was acting in accordance with his or her official duties; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 406.136, Florida Statutes, is amended to read:

406.136 A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~.—

(1) As used in this section, the term “killing of a law enforcement officer who was acting in accordance with his or her official duties” ~~“killing of a person”~~ means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties ~~any human being~~, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

(2) A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

(3)(a) The deceased’s surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ and, unless otherwise

required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

(4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ and may prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, the court shall consider:

1. Whether such disclosure is necessary for the public evaluation of governmental performance;

2. The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and

3. The availability of similar information in other public records, regardless of form.

(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ must be under the direct supervision of the custodian of the record or his or her designee.

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.

(6)(a) Any custodian of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties ~~a person~~ who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A criminal or administrative proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recordings in the manner prescribed herein.

(7) This exemption shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties a person, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, nothing herein is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties a person.

(8) This section only applies to such photographs and video and audio recordings held by an agency as defined in s. 119.011.

~~(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.

Approved by the Governor April 8, 2016.

Filed in Office Secretary of State April 8, 2016.