

CHAPTER 2020-183

House Bill No. 7015

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (1) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(1)1. As used in this paragraph, the term:

a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. “Law enforcement officer” has the same meaning as provided in s. 943.10.

c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

a. Is taken within the interior of a private residence;

b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or

c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;

b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;

c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.

d. Pursuant to a court order.

(I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

(A) Disclosure is necessary to advance a compelling interest;

(B) The recording contains information that is otherwise exempt or confidential and exempt under the law;

(C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;

(D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

(E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;

(F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(G) The recording could be redacted to protect privacy interests; and

(H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

~~8.—This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.

Approved by the Governor September 18, 2020.

Filed in Office Secretary of State September 18, 2020.