



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1404

FINAL FISCAL NOTE

Drafting Number: LLS 18-0867 Date: May 31, 2018
Prime Sponsors: Rep. Coleman; Williams D. Sen. Marble; Lundberg Bill Status: Postponed Indefinitely
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Bill Topic: PEACE OFFICER INTERNAL INVESTIGATION OPEN RECORDS

Summary of Fiscal Impact: State Revenue, State Expenditure (minimal), State Transfer, TABOR Refund, Local Government (minimal), Statutory Public Entity

The bill allows the public to inspect certain records related to peace officers. The bill increases workload for state and local government agencies that employ peace officers on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill clarifies the process for denying access to public records. Prior to determining whether disclosure is contrary to the public interest, the custodian must perform an individualized analysis of each of the specific records requested by balancing:

- the privacy interests of the individual who may be impacted by a decision to allow inspection;
the agency's interest in keeping confidential information confidential;
the agency's interest in pursuing ongoing investigations without compromising them;
the public purpose to be served in allowing inspection; and
other pertinent considerations relevant to the particular request.

With respect to records for an internal investigation related to the on-duty or in-uniform conduct of a peace officer involving a member of the public, the custodian must adhere to the following principles:

- there is a compelling public interest in public inspection of completed internal investigation files related to a peace officer's on-duty or in-uniform conduct involving a member of the public;
public access to internal investigation files enhances the effectiveness of internal investigations, rather than impairing them;

- transparency enhances public confidence in the agency; and
- peace officers do not have a reasonable expectation of privacy in on-duty or in-uniform conduct involving a member of the public.

If, after performing the balancing test described above, the custodian makes a preliminary determination that the factors weigh against release, the custodian must consider whether redaction satisfies the objective of disclosure while also addressing privacy concerns. Redaction must be done sparingly in order to maximize the amount of information available to the public. The custodian may also deny disclosure of a portion or the entire record. If the custodian denies disclosure of records, he or she must provide the requester with a written explanation of the basis of the denial upon request.

The bill also clarifies that any local policy, rule, or ordinance that prohibits the disclosure of records of closed internal investigations related to on-duty or in-uniform conduct of a peace officer involving a member of the public is unenforceable, except in specified circumstances.

## **State Expenditures**

Beginning in FY 2018-19, the bill may increase state workload to provide records and to redact certain information as allowed by the bill. The departments of Corrections, Law, Natural Resources, Public Safety, and Revenue, as well as institutions of higher education, employee peace officers. To the extent that these agencies request legal services to respond to such requests, workload may also increase for the Department of Law to provide counsel. These impacts are assumed to be minimal and can be addressed within existing appropriations of affected state agencies.

## **Local Government**

Beginning in FY 2018-19 and similar to the state, the bill may increase workload to provide records and to redact certain information as allowed by the bill. These impacts are assumed to be minimal, but will vary by jurisdiction.

## **Effective Date**

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on May 4, 2018.

## **Departmental Difference**

The Department of Public Safety identified costs of \$61,276 and 0.8 FTE in FY 2018-19 and \$67,636 and 1.0 FTE in FY 2019-20 and future years to review and redact records for an estimated 10 cases per year. The fiscal note assumes that there is a workload increase under the bill, but the amount of work related to any release or redacting of records for 10 files is less than 210 hours per year, and therefore, does not require any additional FTE or appropriations.

**State and Local Government Contacts**

Corrections  
Higher Education  
Local Affairs  
Public Safety

Counties  
Information Technology  
Municipalities  
Revenue

District Attorneys  
Law  
Natural Resources  
Sheriffs