



September 1, 2021

TO: Virginia Freedom of Information Advisory Council
Records Issues Subcommittee

FROM: Peter Newsham
Chief of Police

RE: **HB 2196 (Mullin) Virginia Freedom of Information Act; required release of law-enforcement disciplinary records**

Chair Locke, Vice Chair Simon, and members of the Records Issues Subcommittee, I am writing to voice my strong opposition to House Bill 2196. HB 2196, if enacted, would allow for the public release of law enforcement disciplinary records. This proposed release of records unfairly singles out law enforcement employees from other government employees, potentially places our law enforcement officers in jeopardy, could have a chilling effect on complainants of police misconduct, may result in malicious unfounded complaints, and will only serve to dissuade current officers from continuing in the profession as well as dissuade potential candidates from becoming police officers.

Unfair Treatment – It is agreed that law enforcement officers have a unique role in society and have a tremendous amount of responsibility in keeping our communities safe. Commensurate with that responsibility is an expansive and strict set of rules and guidelines (Often called General Orders) that a law enforcement officer must abide by. Violations of those strict guidelines can result in disciplinary actions. Often these violations occur in real world scenarios that require split second decisions. Opening investigations into these matters for public review would be a disservice targeted at law enforcement officers. A veteran officer with years of committed service could be publicly humiliated because of a mistake made under very trying circumstances. HR 2196 specifically targets law enforcement officers, singling them out from other public servants and is fundamentally unfair to the men and women who serve in this profession.

Officer Safety – Although HB 2196 provides for redactions of some information, the details provided in released disciplinary records could assist the reader in identifying the witnesses and officers involved in disciplinary cases. Possession of this information combined with open-source data could assist the reader in identifying privately held information about witnesses and our law enforcement officers such as vehicles owned, home addresses etc. This could open place the witness or law enforcement officer and his/her family in jeopardy and open them up to harassment or retaliation in their private capacity. HB 2196, if enacted, will unnecessarily provide the public with details regarding law enforcement officers and witnesses to internal disciplinary investigations, and could potentially place those people in jeopardy.

Chilling Effect on Complainants – Although HB 2196 provides for redactions of some information, the details provided in the disciplinary records could assist the reader in discerning who filed the complaint. Complainants in police misconduct cases would be more reluctant to come forward because they would know that their identity and the complaint they initiated would be publicly shared.

Malicious Complaints – Allegations, even if unfounded, of police misconduct can be very intriguing and can draw a great deal of attention. If disciplinary records are released publicly, it would give an incentive to bad actors to file malicious complaints. A false complaint could draw negative attention to the officer or an agency regardless of the outcome. Multiple similar complaints (regardless of outcome) would paint an officer or agency in a negative light.

Note – the potential for politically motivated malicious unfounded complaints would be even greater for agencies run by elected officials (Sheriffs).

Recruiting and Retention – After the murder of George Floyd and the unrest that followed, law enforcement agencies from across the Commonwealth of Virginia have had difficulty in retaining and recruiting officers. HR 2196 which is targeted specifically at law enforcement officers will have a chilling effect on current employees and recruit candidates. Officers will see this as a message from the General Assembly that they are not respected and will likely result in an increasing number of early retirements and resignations. In addition, the passage of HR 2196 is sure to negatively impact law enforcement efforts to recruit new officers in the state of Virginia. Virginia has a proud history of supporting our law enforcement officers, and I am convinced that the passage of HR 2196 will be a reversal of that trend.

For the reasons stated above, I am vehemently opposed to the passage of HR 2196, and I can make myself available for any conversations on this matter. Thank you.