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By email

July 14, 2020

The Honorable Linda R. Greenstein
Chair, Law and Public Safety Committee
New Jersey State Senate
125 West State Street
Trenton, NJ 08608

The Honorable Joseph P. Cryan
Vice-Chair, Law and Public Safety Committee
New Jersey State Senate
125 West State Street
Trenton, NJ 08608

Re: Reporters Committee Support of S. 2656 (Weinberg)

Dear Chairwoman Greenstein and Vice-Chair Cryan:

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) respectfully submits the following written statement to the Senate Law and Public Safety Committee in support of S. 2656, which would classify law enforcement disciplinary records as government records subject to public access, as well as mandate retention of these records.

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Reporters Committee strongly supports transparency measures like S. 2656 that enable the news media to fulfill its constitutionally recognized role to gather and report newsworthy information about the activities of government, including law enforcement.

The public depends on the press as its “eyes and ears,” and visibility into government activities permits the public to hold the government accountable. *Home News v. New Jersey Dept. of Health*, 677 A.2d 195, 198 (N.J. 1996). This vital function of the press is especially important when it comes to information about law enforcement personnel. In New Jersey, the press routinely serves this watchdog function, but faces challenges because of the secrecy surrounding disciplinary records. *See, e.g., Rukmini Callimachi,*

9 Departments and Multiple Infractions for One New Jersey Police Officer, N.Y. Times (June 24, 2020), <https://perma.cc/Q52S-QGDC>; Andrew Ford, *NJ Police Misconduct: A Lying Cop Ruined a Man's Life. It Could Happen to You.*, Asbury Park Press (Mar. 23, 2019), <https://bit.ly/32gzs5p>.

Currently, under N.J. Stat. § 47:1A-10, agency personnel records are generally not public in New Jersey. Internal affairs records only become public if an officer appeals a disciplinary action to the state Civil Service Commission or the Office of Administrative Law, or if these records become exhibits in a civil or criminal proceeding. See Ted Sherman, *Should Police Disciplinary Records be Public? In N.J., the Answer is Still 'No,' But Some Want that to Change.*, N.J. Advance Media (June 10, 2020), <https://perma.cc/6SND-HNX8>.

S. 2656 would clarify that disciplinary records of any law enforcement officer are government records and therefore would be accessible by the press and public under New Jersey's Open Public Records Act, while providing for redaction of certain sensitive information. The information and records that would be made public include:

- (1) any complaints, allegations, and charges pertaining to an officer;
- (2) the name of the officer complained of or charged;
- (3) transcripts of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;
- (4) the disposition of any proceeding;
- (5) the final written opinion or memorandum supporting the disposition and discipline, if any, imposed, including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered officer;
- (6) internal affairs records relating to a law enforcement officer; and
- (7) any video and audio recording created by a body-worn camera, mobile video recorder, or other similar recording device, which recorded the incident or conduct giving rise to any complaint, allegation, charge, or internal affairs investigation.

The bill would also helpfully require the retention of disciplinary records for 20 years from the date of creation, and would require departments to maintain audio or video recordings of incidents or conduct giving rise to a complaint or investigation against an officer for five years (unless they become part of a criminal or civil investigation, in which case they are to be maintained until the final resolution of the matter).

S. 2656 would require the redaction of certain sensitive information before records can be released. Information to be redacted includes the home addresses, home telephone numbers, work or school addresses, work telephone numbers, and social security numbers of officers and their families, complainants and their families, and witnesses and their families.

Medical information would also be redacted, although the bill provides that it “shall not be construed to permit redactions to any descriptions of injuries or conditions that are the subject of the complaint or caused by or resulting from a law enforcement officer’s alleged conduct.” Names of complainants and witnesses can also be redacted upon request, and record custodians would be required to make a reasonable effort to determine whether complainants or witnesses request such redaction.

These provisions, coupled with the existing confidentiality provisions in New Jersey’s Open Public Records Act, N.J. Stat. Ann. § 47:1A-1.1 (exempting unlisted phone and drivers’ license numbers, among other things), would appropriately balance the legitimate privacy interests of officers, complainants, and witnesses with the need for greater transparency into police activity.

Shedding light on law enforcement misconduct is particularly crucial at this time in our history. In recent weeks, tens of thousands of Americans have taken to the streets, in exercise of their First Amendment rights, to demand justice for George Floyd, a 46-year-old father who, on May 25, 2020, was killed by a white Minneapolis police officer. At the time, that officer reportedly had been the subject of at least 17 prior complaints filed with the Minneapolis Police Department. *See* Shaila Dewan and Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times (May 30, 2020), <https://perma.cc/P92G-DEFM>.

Passage of S. 2656 is a necessary step not only to ensuring police accountability, but also to restoring trust between law enforcement and the communities they serve. The Reporters Committee thanks you in advance for your attention to this urgent issue of paramount public importance. Please do not hesitate to contact Melissa Wasser, policy analyst at the Reporters Committee, with any questions at mwasser@rcfp.org.

Sincerely,

Melissa Wasser
Policy Analyst, Reporters Committee for Freedom of the Press

cc: The Honorable Anthony M. Bucco
The Honorable Nia H. Gill, Esq.
The Honorable Declan J. O’Scanlon Jr.
The Honorable Nicholas J. Sacco