

20167022er

1
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 406.136, F.S., which
4 provides an exemption from public records requirements
5 for a photograph or video or audio recording held by
6 an agency that depicts or records the killing of a
7 person; narrowing the exemption to depictions or
8 recordings of the killing of a law enforcement officer
9 who was acting in accordance with his or her official
10 duties; removing the scheduled repeal of the
11 exemption; providing an effective date.
12

13 Be It Enacted by the Legislature of the State of Florida:
14

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

17 406.136 A photograph or video or audio recording that
18 depicts or records the killing of a law enforcement officer who
19 was acting in accordance with his or her official duties ~~a~~
20 ~~person.~~

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

29 (2) A photograph or video or audio recording that depicts

20167022er

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

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

42 (b) A local governmental entity, or a state or federal
43 agency, in furtherance of its official duties, pursuant to a
44 written request, may view or copy a photograph or video
45 recording or may listen to or copy an audio recording of the
46 killing of a law enforcement officer who was acting in
47 accordance with his or her official duties ~~a person~~ and, unless
48 otherwise required in the performance of their duties, the
49 identity of the deceased shall remain confidential and exempt.

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

54 (4) (a) The court, upon a showing of good cause, may issue
55 an order authorizing any person to view or copy a photograph or
56 video recording that depicts or records the killing of a law
57 enforcement officer who was acting in accordance with his or her
58 official duties ~~a person~~ or to listen to or copy an audio

20167022er

59 recording that depicts or records the killing of a law
60 enforcement officer who was acting in accordance with his or her
61 official duties ~~a person~~ and may prescribe any restrictions or
62 stipulations that the court deems appropriate.

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

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

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

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

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

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

87 (6) (a) Any custodian of a photograph or video or audio

20167022er

88 recording that depicts or records the killing of a law
89 enforcement officer who was acting in accordance with his or her
90 official duties ~~a person~~ who willfully and knowingly violates
91 this section commits a felony of the third degree, punishable as
92 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

20167022er

117 ~~person.~~

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

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

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