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## Coates' Canons Blog: New Public Records Exceptions for Security and Law Enforcement Officers (LEO) Information

By Frayda Bluestein

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Concern about the safety of law enforcement officers (LEOs) and their families has led the North Carolina General Assembly to consider, over the past several years, various proposals to protect from public disclosure personal information of LEOs and other officials who are involved in the criminal justice system. A proposal from last year (mentioned in my blog post here) would have authorized law enforcement personnel to request that their personal information be removed from city and county websites. That bill did not pass, but the legislature revived the issue this session, eventually settling on a provision that protects certain specific information about sworn law enforcement officers. It also creates a new exception to the public records law for the government-issued mobile phone numbers for law enforcement and certain other employees. The state appropriations act (the state budget) also creates new exceptions in the public records law for certain security information. Read on to learn more about these new exceptions.

### LEO Officer Information

The new law, S.L. 2015-225 (SB 699) amends the city and county personnel records privacy statutes (G.S. 160A-168 and 153A-98) to provide that, "even if considered part of an employee's personnel file" certain information regarding a sworn law enforcement officer "shall not be disclosed to an employee or any other person." The law lists three exceptions to this new nondisclosure rule. First let's look at what information is covered by the nondisclosure law, and then we'll consider the provisions that allow disclosure in certain situations.

#### *Information That Can't Be Disclosed*

The new law prohibits disclosure of the following information related to LEOs:

1. Information that might identify the residence of a sworn law enforcement officer.
2. Emergency contact information.
3. Any identifying information as defined in G.S. 14-113.20.

Here is the list of identifying information from G.S. 14-113.20 (which makes it a felony to use this information for identity theft): Social security or employer taxpayer identification numbers; Drivers license, State identification card, or passport numbers; Checking account numbers; Savings account numbers; Credit card numbers; Debit card numbers; Personal Identification (PIN) Code as defined in G.S. 14-113.8(6); Electronic identification numbers, electronic mail names or addresses, Internet account numbers, or Internet identification names; Digital signatures; Any other numbers or information that can be used to access a person's financial resources; Biometric data; Fingerprints; Passwords; Parent's legal surname prior to marriage.

#### *Exceptions*

The main thrust of the new law is to protect LEO information from disclosure. But it identifies three situations in which LEO information can be disclosed: (1) "in accordance with G.S. 132-1.4" (the statute that exempts most criminal investigation records from the public records law), (2) "in accordance with G.S. 132-1.10" (the statute that generally prohibits the disclosure of social security numbers and "identifying information"), or (3) "for the personal safety of the sworn LEO or any other person residing in the same residence."

The first exception probably refers to the provisions under G.S. 132-1.4(c). That subsection requires the release of certain

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criminal investigation information. For example, a public agency might be required to release LEO information under the section that requires the release of the name and address of a person arrested, charged or indicted if the LEO is the person arrested, charged, or indicted (132-1.4(c)(2)), or the name and address of a complaining witness if the LEO is a complaining witness (132-1.4(c)(2)).

The second exception probably refers to the provision in G.S. 132-1.10(c)(1). That subsection allows the release of social security numbers and other identifying information to other governmental agencies if disclosure is “necessary for the receiving entity to perform its duties.” This provision requires the receiving agency to maintain the confidentiality of any such information that is shared.

Third, it seems possible that LEO information could be released internally or externally with the express consent of the LEO. The new law does not address this, although the personnel privacy statutes do. See G.S. 160A-168(c)(6); 153A-98(c)(6).

#### *What Records Are Covered by the New Provision?*

There is a fundamental question that the new law does not clearly address: What records does it cover? One element of its wording – “*even if it is part of the personnel file*” – is puzzling. The wording mirrors an existing provision in the personnel records privacy statutes. When the wording appears there, however, it sets out exceptions to an employee’s right of access to records in his or her personnel file. So it’s clear in that context that the records at issue are those of a particular employee of the city or county. The language in the new law, by contrast, establishes a broad restriction on the release of a potentially broad set of records, some of which might not necessarily reside in the personnel file. Indeed, the wording and location of this law raise two key questions that may not be answerable short of a judicial interpretation or legislative clarification.

The first question is whether the law applies only to information that is part of the personnel file or whether it applies more broadly to all kinds of records a city or county may have. The second question is whether it applies only to records of LEOs who are employees of a particular city or the county, or whether it applies to the records of any LEO that any city or county may have in its possession.

The law certainly applies to LEO information that is part of the personnel file. It also specifically authorizes the release of LEO information under G.S. 132-1.4. This suggests that the prohibition would otherwise apply to criminal investigation records, and possibly to other records outside of the personnel file. The apparent purpose of the new law –to protect the safety of the LEOs and their families – suggests that a broad reading would be appropriate. Such a reading, however, would require cities and counties to identify LEO records and information that might exist outside of the personnel file. Examples of such records might include tax and land records, utility bills, and recreational or other city or county program rosters. A broad reading of the statute would require county tax departments to remove LEO information from their websites. (As Chris McLaughlin has pointed out in his blog post here, they are free to do this even without a statutory directive since there is no legal requirement to post this information.) And although utility billing information is not generally subject to public access, the law does not prohibit its release. Cities and counties with policies that allow access to utility billing information may need to exclude LEO information from those policies. Such an exclusion would be allowed even without this new law.

The second question is whether the requirement applies only to a city’s or county’s own LEO employees. Since the requirement to protect LEO information is housed in the personnel records privacy statute, it is reasonable to assume that it is intended to apply to the LEO employees of a particular unit of government. (Because the personnel privacy statutes apply to applicants and former employees, it would apply to records and information about these categories of LEOs as well.) A broader reading would place upon cities and counties the responsibility of identifying information they have about LEOs employed by other local governments or the state. This would be a significant challenge, requiring a particular city or county to research or request information about LEOs who might live in or do business with units other than the ones in which they are employed.

#### *A Matter for Interpretation*

A narrow reading is that the prohibition applies only to records in the personnel files of the very city or county that employs the LEO. A broad reading is that it applies to any record or information that any city or county possesses about any LEO,

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including those who do not work for the city or the county. Cities and counties will have to consult with their attorneys about how to proceed. Under any reading, though, it appears that the new requirement applies only to cities and counties, and not to any other public agency that might possess LEO information.

### **Protection of Sensitive Security Information**

The legislature also created several new exceptions to G.S. 132-1.7, a statute that deals with sensitive public security information. S.L. 2015-225 adds a new section that protects from public access the mobile telephone numbers issued by a local or state government agency to (1) a sworn law enforcement officer or nonsworn employee of a public law enforcement agency, (2) an employee of a fire department, or (3) any employee whose duties include responding to an emergency. These telephone numbers are not public records, but they are not confidential. So the public agency is free to release them as it deems appropriate. The protection does not appear to extend to the numbers of privately owned mobile telephones, which employees sometimes use in conducting of public business. If a public agency has a record of private numbers that are used for work purposes (outside of the personnel file), they remain subject to public access.

The state budget act (S.L. 2015-241, section 16A.5), amends G.S. 132-1.7 creating three new categories of records that are not public:

- 1) Plans, schedules, or other documents that include information regarding patterns or practices associated with executive protection and security;
- 2) Specific security information or detailed plans, patterns, or practices associated with prison operations; and
- 3) Specific security information or detailed plans, patterns, or practices to prevent or respond to criminal, gang, or organized illegal activity.

Some questions that will probably arise in the course of applying these provisions include: What is meant by “executive protection and security,” and more precisely, who is considered to be an executive? How broadly will “prison operations” be construed in the context of this statute? Will it include all prison operations, or only those related to security? And what kinds of things would constitute records of “patterns” as that term is used in these provisions?

### **Effective Dates**

The LEO information and mobile phone exceptions enacted in S.L. 2015-225 become effective October 1, 2015. The new security information provisions that were enacted in the budget act are effective as of July 1, 2015.

### **Links**

- [canons.sog.unc.edu/?p=7822](https://canons.sog.unc.edu/?p=7822)
- [www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H97v9.pdf](http://www.ncga.state.nc.us/Sessions/2015/Bills/House/PDF/H97v9.pdf)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2015-2016/SL2015-225.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2015-2016/SL2015-225.html)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-168](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-168)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-98](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-98)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-113.20](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-113.20)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.4](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.4)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.10](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.10)
- [canons.sog.unc.edu/?p=8015](https://canons.sog.unc.edu/?p=8015)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.7](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=132-1.7)