House Engrossed

disciplinary appeals; final disposition reporting

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 139

HOUSE BILL 2340

AN ACT

AMENDING SECTION 38-1106, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-1106, Arizona Revised Statutes, is amended to read:

38-1106. Appeal of disciplinary actions; transcripts; change of hearing officer or administrative law judge; burden of proof; final disposition report; exception

A. In any appeal of a disciplinary action by a law enforcement officer, the parties shall cooperate with each other, act in good faith and exchange copies of all relevant documents and a list of all witnesses pursuant to the following time periods and requirements:

1. Within fourteen calendar days after the employer's receipt of a written request from the law enforcement officer for a copy of the investigative file that is accompanied by a copy of the filed notice of appeal, the employer shall provide a complete copy of the investigative file as well as the names and contact information for all persons interviewed during the course of the investigation.

2. Not later than fourteen calendar days before the appeal hearing, the parties shall produce and serve on every party the following information:

   (a) The name of each witness whom the disclosing party expects to call at the appeal hearing, with a designation of the subject matter on which each witness might be called to testify. A witness may decline an interview. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An employer shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing evidence in the appeal.

   (b) The name and contact information of each person who has given statements, whether written or recorded or signed or unsigned, regarding matters relevant to the notice of discipline and the custodian of the copies of those statements.

   (c) Copies of any documents that may be introduced at the hearing and that have not previously been disclosed.

3. The duty to disclose information continues to exist throughout the process and up to the end of the appeal process.

B. It is unlawful for a person to disseminate information that is disclosed pursuant to subsection A of this section to any person other than the parties to the appeal and their lawful representatives for purposes of the appeal of the disciplinary action. This subsection does not prohibit the use of the information in the hearing or disclosure pursuant to title 39, chapter 1, article 2.

C. If a transcript is required in an administrative hearing, the employer shall obtain the transcript and provide a copy to the law
enforcement officer within ten calendar days after the employer's receipt of the transcript.

D. Failure to comply with the requirements of subsection A or B of this section shall result in the exclusion of the witness, evidence or testimony, unless the failure to comply is because of excusable neglect.

E. The employer or the law enforcement officer may seek a determination by the hearing officer, administrative law judge or appeals board hearing the appeal regarding any evidence that the employer or the law enforcement officer believes should not be disclosed pursuant to subsection A of this section because the risk of harm involved in disclosure outweighs any usefulness of the disclosure in the hearing. In determining whether evidence will be disclosed, the hearing officer, administrative law judge or appeals board may perform an in camera review of the evidence and may disclose the material subject to any restriction on the disclosure, including the closing of the hearing or the sealing of the records, that the hearing officer, administrative law judge or appeals board finds necessary under the circumstances.

F. In any appeal of a disciplinary action by a law enforcement officer in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or the employer, within ten calendar days after the appointment of the hearing officer or administrative law judge, may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings or if the employer is a county, city or town, on the first request of a party, the request shall be granted. A city or town with a population of less than sixty-five thousand persons or a county with a population of less than two hundred fifty thousand persons must provide, if necessary to comply with this subsection, for an alternate hearing officer by means of an interagency agreement with another city, town or county. If the law enforcement officer is the party who requested the alternate hearing officer, the law enforcement officer shall reimburse the city, town or county for one-half of any additional expenses incurred by the city, town or county in procuring the alternate hearing officer under the interagency agreement. If an alternate hearing officer is requested by means of an interagency agreement, the hearing officer shall provide to the law enforcement officer or employer the option of continuing the hearing for an additional ten calendar days. Any subsequent requests may be granted only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned hearing officer or administrative law judge. The supervisor or supervising body of the hearing officer or administrative law judge shall decide whether a showing of prejudice has been made.

G. The employer has the burden of proof in an appeal of a disciplinary action by a law enforcement officer.
H. Except where a statute, rule or ordinance makes the administrative evidentiary hearing the final administrative determination and after a hearing where the law enforcement officer and the employer have been equally allowed to call and examine witnesses, cross-examine witnesses, provide documentary evidence and otherwise fully participate in the hearing, an employer or a person acting on behalf of an employer may amend, modify, reject or reverse the portion of a decision made by a hearing officer, administrative law judge or appeals board that was arbitrary or without reasonable justification. The employer or person acting on behalf of the employer shall state the reason for the amendment, modification, rejection or reversal.

I. Notwithstanding chapter 3, article 3.1 of this title, all hearings pursuant to this section shall be open to the public. Executive sessions permitted allowed pursuant to section 38-431.03 shall be limited to legal advice to a personnel appeals board or for deliberations.

J. A law enforcement officer who prevails in an appeal where a termination has been reversed shall be awarded retroactive compensation from the date of the officer's separation to the date of reinstatement. The hearing officer, administrative law judge or appeals board hearing the appeal shall determine the amount of retroactive compensation awarded and any reduction to that amount. Retroactive compensation may be reduced:

1. If there is undue delay in setting a hearing date caused by the law enforcement officer or the law enforcement officer's representative.
2. If the law enforcement officer requests a continuance.
3. If there exists a period between separation and reinstatement that the law enforcement officer would have been unable to perform the duties of a law enforcement officer.
4. By any amount earned by the law enforcement officer in alternative employment.
5. If the hearing officer, administrative law judge or appeals board finds that the law enforcement officer's action or misconduct warrants suspension or demotion.

K. The hearing officer, administrative law judge or appeals board shall state in every finding of disciplinary action whether or not just cause existed for the disciplinary action.

L. The hearing officer, administrative law judge or appeals board shall document in the record those circumstances where the hearing officer, administrative law judge or appeals board determines that a party has clearly violated a party's obligation under this section.

M. IMMEDIATELY AFTER A LAW ENFORCEMENT OFFICER RECEIVES THE FINAL DISPOSITION OF AN APPEAL OF A DISCIPLINARY ACTION, THE ADMINISTRATIVE LAW JUDGE, HEARING OFFICER OR PRESIDING AUTHORITY SHALL PROVIDE A FINAL DISPOSITION REPORT THAT INCLUDES THE FINAL DECISION AND ANY AMENDED
FINDINGS OF FACT TO THE LAW ENFORCEMENT AGENCY THAT INITIATED OR IMPOSED THE DISCIPLINE.

N. A LAW ENFORCEMENT AGENCY THAT RECEIVES A FINAL DISPOSITION REPORT SHALL INCLUDE THE FINAL DISPOSITION REPORT IN THE AGENCY'S ORIGINAL INVESTIGATION RECORD. IF THE LAW ENFORCEMENT AGENCY PROVIDED A PROSECUTING AGENCY WITH INFORMATION THAT WAS OBTAINED DURING THE INVESTIGATION OF THE LAW ENFORCEMENT OFFICER FOR THE PROSECUTING AGENCY'S RULE 15.1 DATABASE, THE LAW ENFORCEMENT AGENCY SHALL FORWARD THE FINAL DISPOSITION REPORT TO THE PROSECUTING AGENCY.

O. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

APPROVED BY THE GOVERNOR APRIL 14, 2022.