

# TCOLE PRESENTS:

SHARING LAW ENFORCEMENT  
PERSONNEL RECORDS: NEW LEGAL  
REQUIREMENTS

# INTRODUCTION

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# LEGAL DISCLAIMER

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# TCOLE LEGISLATIVE CHANGE

Most of the changes we will be speaking about stem from one of two bills from the last two legislative sessions:

- Senate Bill 24 (83R)
- Senate Bill 1445 (88R)

# KEY CHANGES

- Public License Lookup (Licensee Service Report database)
- TCOLE Confidential Statewide Employment Database
  - License status records
  - Agency Personnel Files, including Misconduct Investigation Reports
- Agencies must adopt a series of model policies or policies substantially similar to the state models

# HIRING PROCEDURES

MODEL POLICY

Tex. Occ. Code § 1701.4522



# HIRING PROCEDURES

- Tex. Occ. Code § 1701.4522
- Requirement to adopt model policy establishing procedures applicable to a law enforcement agency hiring a licensee
- Agencies required to adopt the model policy, or a substantively similar policy, by June 1, 2025

# HIRING PROCEDURES

- Model Policy combines 4 different statutes and rules regarding the background investigation and appointment process for ease of reference and provides some tips for best practices
  - Tex. Occ. Code § 1701.303
  - Tex. Occ. Code § 1701.451
  - 37 Tex. Admin. Code § 217.1
  - 37 Tex. Admin. Code § 217.7



# HIRING PROCEDURES

## Applicant Submits:

- Personal History Statement (PHS)
- Authority to Release Information

## Hiring Agency must:

- Request from TCOLE any information possessed on licensee
- Obtain and review personnel files and other employee records from each previous law enforcement agency employer.

# HIRING PROCEDURES

## Mandatory Sharing of Personnel Files:

- If a law enforcement agency receives from a law enforcement agency a request for information and the person's consent on the forms prescribed by the commission, the agency **shall** provide the information to the requesting agency.
- Tex. Occ. Code § 1701.451(c)

# HIRING PROCEDURES

## Failure to Share Files When Requested

- If an entity or individual contacted for information required to be reviewed under this section refused to provide the information or did not respond to the request for information, the confirmation submitted to the commission must document the manner of the request and the refusal or lack of response. Tex. Occ. Code § 1701.451(b)
- Failure to share personnel files related to law enforcement agency request may result in sanctions.

# HIRING PROCEDURES

## Methods of File Sharing:

- TCOLE Secure Share is the most common means of file sharing. If the request for files comes through the TCOLE Secure Share System agencies are obligated to respond.
- An agency holding personnel files may not require the requester to come and view the files in person.
- The requester may elect to come and view the personnel files in person.

# PERSONNEL FILES

MODEL POLICY

Tex. Occ. Code § 1701.4535



# PERSONNEL FILES

In the hands of the agency and for the purpose of determining confidentiality, the requested officer's records are distinguished as either personnel or department files. Under the model policies and existing civil service law, the requested records are characterized and correspondingly protected according to the following:

# TWO TYPES OF FILES

PERSONNEL FILE = (a)-FILE

DEPARTMENT FILE = (g)-FILE

# PERSONNEL FILE = (a) – FILE

- Under the model policies and their foundational civil service laws, the question of whether information belongs in the *personnel file* is determined by looking at what the information is. Importantly, the *personnel file* includes **only** the following:
  - any letter, memorandum, or document relating to a commendation, congratulation, or honor bestowed on the license holder by a member of the public or by the employing agency for an action, duty, or activity that relates to the license holder's official duties;



# PERSONNEL FILE = (a) – FILE CONT.

- any misconduct by the license holder if the letter, memorandum, or document is from the employing agency and resulted in disciplinary action; and
- the periodic evaluation of the license holder by a supervisor.

Such information is equivalent to the (a)-file for civil service agencies and is subject to public disclosure.

# PERSONNEL FILE = (a) – FILE CONT.

- If a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file:
  - The agency head or their designee shall notify the affected license holder within 30 days.
  - The license holder may file a written response to the negative document within 30 days of receiving that notice.

# PERSONNEL FILE = (a) – FILE CONT.

- A license holder is entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file.

DEPARTMENT FILE = (g)-FILE

# DEPARTMENT FILE = (g) - FILE

- In contrast, the *department file* protects the privacy interest and reputation of “innocent officers...from unsubstantiated innuendos and accusations.” For example, investigative materials related to unsustained misconduct belong in the *department file*, not the *personnel file*.
- An agency may not release any information in the department file without the written consent or release of the law enforcement officer as part of a pre-employment background investigation.

# AGENCY REQUIREMENTS

All law enforcement agencies shall adopt the personnel files model policy, or a substantively similar policy, no later than June 1, 2025.

# PERSONNEL FILES

- Upon separation from an agency, all records related to a law enforcement officer will be submitted to the confidential statewide employment database maintained by TCOLE not later than the 30th day after the date the license holder separates from the agency or on request by TCOLE as part of an ongoing investigation relating to the license holder.
- Prior to submission of such records to the confidential database, the model policies set forth the procedures for maintaining law enforcement records while still in the hands of the employing agency.

# TCOLE REPORTING TIMELINE

Policy  
Implementation  
June 1, 2025



Digital Solution  
October 31,  
2025



# WHAT DO I DO WITH MY FILES?

Keep  
doing what  
you are  
doing now.

# HOW DO I REQUEST BACKGROUND INFORMATION?

Keep  
doing what  
you are  
doing now.

# MISCONDUCT ALLEGATIONS

MODEL POLICY

Tex. Occ. Code § 1701.4522



# DEFINITIONS AND REFERENCES

- License Holder: A Texas County Jailer, Peace Officer, or Telecommunicator.
- Allegation of Misconduct: A written complaint of misconduct and signed by the person making the complaint.

# DEFINITIONS AND REFERENCES CONT.

- Misconduct: Violations of federal or state laws or local ordinances and alleged conduct including; use of excessive force, untruthfulness, unlawful search, unlawful arrest, civil rights violation, racially motivated police actions, discrimination, sexual harassment, or any conduct that seriously degrades the integrity or good order of the organization.

For purposes of this policy, allegations of untruthfulness shall include false, untrue, or misleading statements, either by overt means or by omission. Misconduct does not include minor rule violations of a less serious nature.

# DEFINITIONS AND REFERENCES CONT.

- **Summary Report:** A report providing a description of each allegation of misconduct, the investigative findings of each allegation, including whether sustained or not sustained, and the final disposition of each allegation.

Agency receives written signed complaint of misconduct by licensee and has 180 days to complete investigation

Agency creates summary report describing each allegation and investigation, including disposition

IF CRIMINAL,  
agency reports to TCOLE within 30 days of completion

IF ADMINISTRATIVE,  
agency submits summary report to TCOLE no later than 30 days after separation

Place sustained findings into Personnel File/(a)-file

Place unsustained findings into the Department File/(g)-file

## MISCONDUCT POLICY FLOWCHART

# MISCONDUCT

- Policies due to TCOLE by June 1, 2025
- Submit using the Misconduct Investigation Report (MIR)
- Due no later than 30<sup>th</sup> day after the date of the licensee's separation



# MEDICAL AND PSYCHOLOGICAL EXAMINATION OF A LICENSEE

MODEL POLICY

Tex. Occ. Code § 1701.167



# PURPOSE:

- Monitoring a member's fitness for duty, both medically and psychologically, is essential for the safety and welfare of the members of the agency and the community.
- The purpose of this policy is to ensure that all members of an agency remain medically and psychologically fit for duty and able to perform their essential job functions.
- Implementation of the model policy was due September 1, 2024

# SUBSCRIBE

