

## SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of  
2 Information Act; required release of law-enforcement disciplinary records; exceptions.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That § 2.2-3706 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3706. Disclosure of law-enforcement and criminal records; limitations.**

6 A. Records required to be released. All public bodies engaged in criminal law-enforcement  
7 activities shall provide the following records when requested in accordance with the provisions of this  
8 chapter:

9 1. Adult arrestee photographs taken during the initial intake following the arrest and as part of the  
10 routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases  
11 until such time as the release of the photograph will no longer jeopardize the investigation;

12 2. Information relative to the identity of any individual, other than a juvenile, who is arrested and  
13 charged, and the status of the charge or arrest; ~~and~~

14 3. Records of completed unattended death investigations to the parent or spouse of the decedent  
15 or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided  
16 the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death"  
17 means a death determined to be a suicide, accidental or natural death where no criminal charges will be  
18 initiated, and "immediate family" means the decedent's personal representative or, if no personal  
19 representative has qualified, the decedent's next of kin in order of intestate succession as set forth in §  
20 64.2-200; and

21 4. Notwithstanding any other provisions of law to the contrary, law-enforcement disciplinary  
22 records related to completed substantiated disciplinary investigations, provided that the following  
23 information shall be redacted from such records:

24 a. The home, work, or school address or home or work telephone number of any law-enforcement  
25 officer, law-enforcement officer's family member, complainant, complainant's family member, witness,  
26 or witness's family member;

27 b. Any social security numbers;

28 c. Any medical information concerning the law-enforcement officer or the complainant. However,  
29 this subdivision c shall not be construed to prohibit the release of any description of injuries or other  
30 conditions that are the subject of the complaint and were caused by or otherwise resulted from the law-  
31 enforcement officer's alleged conduct; and

32 d. Any technical infractions of a law-enforcement officer. As used in this subdivision d, "technical  
33 infraction" means a minor rule violation by a law-enforcement officer solely related to the enforcement of  
34 administrative or departmental rules of the law-enforcement agency such officer is employed by that (i)  
35 does not involve an interaction with members of the public; (ii) is not a matter of public concern; (iii) does  
36 not involve deception, misrepresentation, dishonesty, or intemperate behavior by the law-enforcement  
37 officer; and (iv) is not otherwise connected to the law-enforcement officer's investigative, enforcement,  
38 training, supervision, or reporting responsibilities.

39 As used in this subdivision 4, "law-enforcement disciplinary records" means any record created in  
40 furtherance of a law-enforcement disciplinary proceeding pursuant to § 9.1-600 or any other  
41 administrative or judicial proceeding, whether such proceeding takes place in the Commonwealth or in  
42 another jurisdiction. Such records include (i) the complaint, allegation, or charge made against the law-  
43 enforcement officer; (ii) the name of the law-enforcement officer; (iii) the transcript of any disciplinary  
44 hearing or administrative or judicial hearing and any exhibits introduced at such hearing; (iv) the  
45 disposition of any disciplinary proceeding or administrative or judicial proceeding; (v) the final written  
46 opinion or memorandum supporting the disposition of any disciplinary proceeding or administrative or  
47 judicial proceeding, including any findings of fact and analysis of the officer's conduct; and (vi) any video  
48 or audio recordings related to the complaint, allegation, or charge created by a body-worn camera, mobile  
49 video recorder, or other similar recording device.

50 B. Discretionary releases. The following records are excluded from the mandatory disclosure  
51 provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such  
52 disclosure is prohibited by law:

53 1. Criminal investigative files, defined as any documents and information, including complaints,  
54 court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness  
55 statements, and evidence, relating to a criminal investigation or prosecution not required to be disclosed  
56 in accordance with § 2.2-3706.1;

57 2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii)  
58 investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments  
59 of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter  
60 8 of Title 23.1;

61 3. Records of local law-enforcement agencies relating to neighborhood watch programs that  
62 include the names, addresses, and operating schedules of individual participants in the program that are  
63 provided to such agencies under a promise of anonymity;

64 4. All records of persons imprisoned in penal institutions in the Commonwealth provided such  
65 records relate to the imprisonment;

66 5. Records of law-enforcement agencies, to the extent that such records contain specific tactical  
67 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the  
68 general public;

69 6. All records of adult persons under (i) investigation or supervision by a local pretrial services  
70 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,  
71 probation supervision, or monitoring by a local community-based probation services agency in accordance  
72 with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state  
73 probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

74 7. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for  
75 cellular telephones, pagers, or comparable portable communication devices provided to its personnel for  
76 use in the performance of their official duties;

77 8. Those portions of any records containing information related to undercover operations or  
78 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations  
79 or protective details. Nothing in this subdivision shall operate to allow the withholding of information  
80 concerning the overall costs or expenses associated with undercover operations or protective details;

81 9. Records, other than those required to be disclosed pursuant to subdivision A 4, of (i) background  
82 investigations of applicants for law-enforcement agency employment, (ii) administrative investigations  
83 relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other  
84 administrative investigations conducted by law-enforcement agencies that are made confidential by law;

85 10. The identity of any victim, witness, or undercover officer, or investigative techniques or  
86 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or  
87 restricted under § 19.2-11.2; and

88 11. Records of the Sex Offender and Crimes Against Minors Registry maintained by the  
89 Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information  
90 obtained from state, local, and regional officials, except to the extent that information is required to be  
91 posted on the Internet pursuant to § 9.1-913.

92 C. Prohibited releases. The identity of any individual providing information about a crime or  
93 criminal activity under a promise of anonymity shall not be disclosed.

94 D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in  
95 fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing  
96 calls for service or other communications to an emergency 911 system or any other equivalent reporting  
97 system may withhold those portions of noncriminal incident or other noncriminal investigative reports or  
98 materials that contain identifying information of a personal, medical, or financial nature where the release  
99 of such information would jeopardize the safety or privacy of any person. Access to personnel records of  
100 persons employed by a law-enforcement agency shall be governed by the provisions of subdivision B 9  
101 ~~of this section~~ and subdivision 1 of § 2.2-3705.1, as applicable.

102 E. Records of any call for service or other communication to an emergency 911 system or  
103 communicated with any other equivalent reporting system shall be subject to the provisions of this chapter.

**104** F. Conflict resolution. In the event of conflict between this section as it relates to requests made  
**105** under this section and other provisions of law, this section shall control.

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