



COMMONWEALTH OF VIRGINIA

Colonel Gary T. Settle
Superintendent

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DEPARTMENT OF STATE POLICE

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Lt. Colonel Tracy S. Russillo
Deputy Superintendent

September 2, 2021

The Virginia Freedom of Information Advisory Council
Records Issues Subcommittee
Pocahontas Building, 10th Floor
900 E. Main Street
Richmond, VA 23219

Dear FOIA Council Subcommittee Members:

The Virginia Department of State Police seeks to convey additional concerns regarding Delegate Mullin's HB2196 which is currently before the FOIA Council Subcommittee on Records Issues. The Department takes no position on the proposal.

Currently, a majority of states maintain employee disciplinary files confidentially or with significantly reduced public availability. The Commonwealth of Virginia is included in that list of thirty-eight states. Under the proposal, all sworn members of the Virginia State Police will be subject to additional scrutiny in a variety of public forums beyond the well-established internal affairs disciplinary process. Minor policy violations and baseless complaints will become synonymous with serious, founded complaints, causing unwarranted embarrassment and reputational damage.

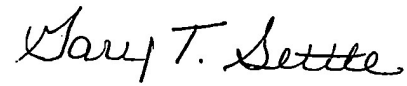
The release of disciplinary records implicate a variety of privacy interests and concerns for police officers and their families. The broad access to the full scope of disciplinary actions, including unfounded complaints, may serve as a basis to harass and dox officers who have been involved in matters of intense public interest and who would otherwise be afforded the same degree of privacy as other government officials.

While there may be legitimate public interest in other non-law enforcement employee records, police officers will occupy the only category of employee with no protections or privacy for disciplinary records. The new reality will be that no matter how minor the policy violation, a police officer will be publicly shamed rather than privately corrected. These types of complaints should remain outside of public disclosure for all employees, including police officers. In contrast, disciplinary records and internal affairs investigations relating to wrongful arrest, use of force complaints or depriving a person of their rights secured by law are of significant public concern and are currently subject to release under Va. Code § 19.2-201 when the officer is a witness in a criminal case or the subject of an investigation. In conjunction with Va. Code §15.2-1707, the law provides a significant level of police accountability for a very broad scope of serious complaints, both founded and unfounded, and for offenses constituting felonies, crimes of moral turpitude, domestic assault and sexual assault. The Commonwealth's Attorneys in all areas of the state currently have access to the scope of disciplinary records listed in § 19.2-201 and have the ability

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to investigate and gather records, including disciplinary records, for other offenses constituting crimes involving police officers.

Sincerely,

A handwritten signature in cursive script that reads "Gary T. Settle".

Superintendent

GTS/KCH/dlo