

9-1-1 Checklist

1. Is the matter criminal or noncriminal?

2. If the matter is noncriminal, does the record contain any personal, medical, or financial information? (If “yes,” go to 2a below. If “no,” then release the record.)

2a. If the record has personal, medical, or financial information, would releasing that information jeopardize any person’s safety or privacy? (If it would, then you can redact out the personal, medical, or financial information before releasing the record. Otherwise, release the record without redacting it.)

3. If the matter is criminal, then is it a criminal investigative file that may be withheld (typically as a witness statement or evidence in a criminal investigation or prosecution)? If so, the record may be withheld. Additionally, exemptions to protect the identities of victims, witnesses, undercover officers, or confidential informants might also apply.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

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Virginia Freedom of Information Advisory Council

Handling FOIA Requests for Records of 9-1-1 Calls



Introduction

What do you do when someone requests a copy of a 9-1-1 call record?

FOIA states that "Records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter." Va. Code § 2.2-3706 (C). Essentially, this means that 911 call records are subject to FOIA, but exemptions or prohibitions may apply to the release of some or all of information in those records. First, remember that the default rule under FOIA is that all public records must be disclosed upon request unless an exemption in law applies that allows the record to be withheld. **There is no blanket exemption for 9-1-1 call records.** Just as with other records, you have to look at the contents and the context to determine whether the record, or any part of it, is exempt. In order to help you make those determinations, some of the questions you will want to answer before responding to a request for 9-1-1 call records are outlined in this brochure.

Analysis

What is the nature of the call - criminal or noncriminal?

Criminal records and noncriminal records are treated differently, so this should be the first determination you make. Each type is addressed separately below.

Noncriminal Call Records

If the records are not about criminal matters, the general rule is that the call record is open, but you may withhold those portions of the record that contain personal, medical, or financial information to protect any person's safety or privacy. Noncriminal incidents records include compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, and accidental deaths. Va. Code § 2.2-3706 (B).

Criminal Call Records

If the call is criminal in nature, then there are many different exemptions that may apply. A full list of all the possible exemptions would be beyond the scope of this guide, but here are some of the ones most likely to apply to 9-1-1 call records:

- Criminal investigative files, defined as "complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution," may be withheld. Va. Code § 2.2-3706 (A) (2) (a).
- The identity of any victim, witness, or undercover officer may be withheld. Va. Code § 2.2-3706 (A) (2) (j).
- The identity of any individual providing information about a crime or criminal activity under a promise of anonymity (i.e., confidential informants) shall not be disclosed. Va. Code § 2.2-3706 (A) (3).

Other Records

Generally, it is our understanding that there usually are various other records associated with a 9-1-1 call record, such as records that identify which dispatcher took the call and the time the call was received. Generally, these records are not exempt and must be disclosed upon request. Based on experience speaking with law-enforcement agencies and emergency callcenters, it appears that these records are often kept separately from the audio record or written transcript of the 9-1-1 call itself, but sometimes they are kept together as a single record. Under FOIA, if a record contains portions that are exempt and portions that are not, you may only withhold the portions that are exempt. The nonexempt portions must be released upon request.