

Criminal Investigative Records Subcommittee
of the Virginia Freedom of Information Advisory Council
Meeting Summary
Monday, November 8, 2010
12:30 PM
General Assembly Building
Richmond, Virginia

The Criminal Investigative Subcommittee held its third meeting of the interim on November 8, 2010.¹ The purpose of this meeting was to consider a redraft of existing § 2.2-3706 intended to make the section easier to read and understand without making substantive changes to the existing law.

After calling the meeting to order and having the subcommittee members and members of the public introduce themselves, Chairman Fifer noted that as only two members of the subcommittee were present, there was not a quorum and no official business could be conducted. However, by consensus it was decided to proceed with presentation of the redraft for purposes of discussion. Staff presented the redraft of § 2.2-3706, which had been reorganized since it was presented at the last meeting of the subcommittee to consist of five subsections lettered A through E: (A) definitions, (B) discretionary releases, (C) required releases, (D) prohibited release, and (E) conflict resolution.

The current exemption that allows redaction of certain information from non-criminal records² was incorporated into subsection (B) of the draft. Craig Merritt, on behalf of the Virginia Press Association, suggested that due to prior history regarding that subsection, it was meant to be a requirement to release records that had previously been exempt, and therefore it should remain either as its own subsection, as in current law, or be incorporated into subsection (C) of the draft. It was agreed by consensus that it should remain as its own separate subsection, which would then become subsection (D) with corresponding re-lettering of the subsections that follow. The subcommittee further agreed by consensus to add numbering within subdivision C 1 of the redraft, thus separately identifying the conditions under which criminal incident information might be withheld.

The subcommittee also discussed subsection (D) setting forth the prohibition on the release of information about the identity of informants under a promise of anonymity, noting that it is the only prohibition on release found within FOIA. It was at first suggested that it might be better moved outside of FOIA to promote consistency within the statute (so that FOIA would contain only discretionary exemptions, while all mandatory prohibitions on release would be found outside of FOIA). It was then

¹ Members Fifer (Chair) and Miller were present. Delegate Griffith, Mr. Selph and Dr. Treadway were unable to attend.

² Subsection G of § 2.2-3706, which reads as follows: "Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except that those portions of noncriminal incident or other investigative reports or materials that contain identifying information of a personal, medical or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person."

suggested that the prohibition itself be moved outside of FOIA but a reference to it remain within FOIA so that people would still be able to find it easily among the exemptions in the law-enforcement and criminal records section of FOIA. However, as there appeared to be no strong interest in moving forward, the matter was dropped.

As a final matter, the subcommittee agreed to add to the redraft a second enactment clause stating that the redraft is declaratory of existing law. While lack of a quorum prevented the committee from taking formal action, without objection it was agreed to report to the FOIA Council that it was the consensus of the members present to proceed with the redraft as amended. Chairman Fifer further noted that the work of the subcommittee should continue next year, as there appear to be many unresolved issues yet to be addressed. The meeting was then adjourned.

#