



FOIA Council <foiacouncil@dls.virginia.gov>

Criminal Records Exclusion FOIA proposal

2 messages

Bernard Caton <Bernard.Caton@alexandriava.gov>

Fri, Jul 15, 2011 at 12:21 PM

To: Craig Fifer <Craig.Fifer@alexandriava.gov>

Cc: "foiacouncil@dls.virginia.gov" <foiacouncil@dls.virginia.gov>, Randy Sengel

<Randy.Sengel@alexandriava.gov>, Cleveland Spruill <Cleveland.Spruill@alexandriava.gov>

Craig—I am sending these comments on the recently circulated draft Criminal FOIA proposal to you as Chairman of the Criminal Investigative Records Subcommittee of the FOIA Council.

Although Alexandria City staff has not had time to thoroughly review this proposal, I would like to note for the record that if the proposal is given serious consideration, staff has significant concerns with it. Here are some very preliminary comments.

We believe that the current FOIA criminal records exemption was crafted some years ago to address legitimate concerns with respect to the release of criminal records, and we have not seen any evidence that this exemption is no longer needed. Furthermore, we have not seen examples of cases where the public would benefit by having this exemption rewritten. It is my understanding that these provisions were reexamined some years ago, and the individuals examining them did not recommend a major rewrite.

In addition, the draft proposes to rewrite the current law with respect to criminal incident information, again with no reason given for the need for a major revision. The proposed revisions also call for creation of significant amounts of information (e.g., list of property damaged rather than a "general description" of property damaged, as is required under current law). As such, this proposal appears to go far beyond the general purpose of FOIA, which is to make written records available to the public—as opposed to the creation of new records.

A major concern relates to the proposed three-year limit on the withholding of records for a criminal incident when no prosecution has been initiated (2.2-3706.1.B.2). In many cases, especially those involving unsolved homicides, the investigation is considered active for far more than 3 years. What purpose would be served by requiring the release of information that still has the potential to help close a case?

Finally, we believe that the fiscal impact of these proposed changes would be significant, since they could require large amounts of time for police and commonwealth's attorneys to review and redact information. It would be very difficult to budget for such staff time.

If the FOIA Council decides to pursue this proposal, we will be happy to provide additional detailed comments.

Craig Fifer <Craig.Fifer@alexandriava.gov>

Fri, Jul 15, 2011 at 12:23 PM

To: Bernard Caton <Bernard.Caton@alexandriava.gov>

Cc: "foiacouncil@dls.virginia.gov" <foiacouncil@dls.virginia.gov>, Randy Sengel <Randy.Sengel@alexandriava.gov>, Cleveland Spruill <Cleveland.Spruill@alexandriava.gov>

Thanks very much. I'll ask our staff to make sure these comments are included with any others distributed at the meeting on Monday.

-Craig

From: Bernard Caton
Sent: Friday, July 15, 2011 12:22 PM
To: Craig Fifer
Cc: foiacouncil@dls.virginia.gov; Randy Sengel; Cleveland Spruill
Subject: Criminal Records Exclusion FOIA proposal

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