

**Proposal for Criminal FOIA Exclusion [DRAFT]**

**2.2-3706.1. Criminal incident, arrest, charge and investigative records.**

All public bodies engaged in criminal law enforcement activities shall provide or withhold public records and other information relating to criminal incidents, arrests, charges and investigations in accordance with this section.

A. Information concerning criminal incidents, arrests and charges as described in subdivisions 1, 2, 3 and 4 below shall be released as soon as possible after a request is made, but in no event later than one business day after the request is made. If the information is maintained in a public record, such public record shall be produced in relevant part. If the information is not maintained in a public record, it shall be provided to the requester orally by a representative of the public body.

1. When an alleged crime has been committed, the public body shall make available the date and approximate time of the alleged crime, the location of the alleged crime, the name, age and gender of each alleged victim, a list of property allegedly damaged or stolen, and the name of the person primarily assigned to the investigation of the alleged crime. In the event the alleged crime involves any form of sexual assault, and the name of the victim has not been made public in connection with the alleged crime by other means, the name of the victim may be withheld.

2. When any person has called an Emergency 911 number or communicated with any other equivalent reporting system to report an alleged criminal incident, the record of such call shall be made available. The public body may redact from such record identifying information of a personal, medical or financial nature where the release of such information would jeopardize the safety of any person or any privacy interest protected by law.

3. When an adult is arrested in connection with the commission of any crime, the public body shall make available the name and address of the arrestee and a copy of any photograph of the arrestee taken in connection with the arrest. When a juvenile age 14 or older is arrested in connection with a crime that would be a felony if committed by an adult, the public body shall make available the name and address of the arrestee and a copy of any photograph of the arrestee taken in connection with the arrest. If an arrested person is maintained in custody, the location at which he or she is being held shall be disclosed. An arrestee photograph may only be withheld when necessary to avoid jeopardizing an investigation in a felony case, and must be released promptly when its release will no longer jeopardize the investigation.

4. When an adult is charged with a crime, the public body shall provide the name and address of the person charged and state with particularity each crime with which he or she is charged, including reference to all criminal statutes allegedly violated by the person charged. When a juvenile age 14 or older is arrested in connection with a crime

that would be a felony if committed by an adult, the public body shall provide the name and address of the person charged and state with particularity each crime with which he or she is charged, including reference to all statutes allegedly violated by the person charged. All records, including but not limited to any warrant, summons, indictment, or information, stating the charges against a person referenced in this subsection shall be provided upon request.

B. A public body may withhold its records concerning an active criminal investigation, including witness statements, correspondence, crime scene photographs, forensic reports, memoranda and other papers generated by law enforcement personnel in connection with such investigation. No record which is otherwise a public record, including but not limited to any public record subject to the provisions of this chapter, shall lose its status as a public record when it is obtained or copied by a public body engaged in law enforcement. For purposes of this subdivision, a criminal investigation is “active” until:

1. the Commonwealth has prosecuted all persons connected with the alleged crime, and there is no likelihood of a further prosecution against an alleged perpetrator of the crime, or
2. three years have passed from the date of the criminal incident, and no prosecution has been initiated against any person for the crime.

C. When releasing public records relating to a criminal investigation, a public body may redact information from such public records if:

1. disclosure of the information is contrary to the requirements of Va. Code § 19.2-11.2;
2. disclosure of the information identifies or has a real tendency to identify any undercover law enforcement officer;
3. disclosure of the information identifies or has a real tendency to identify any confidential informant or any person who has provided information to law enforcement authorities under a promise that his or her identity will not be disclosed;
4. disclosure of the information identifies or has a real tendency to identify a prospective witness in a criminal prosecution who has agreed to testify under a promise that his identity will be maintained in confidence until he is called to testify at trial; or
5. disclosure of the information would impede the investigation of a series of related criminal activities, such as an ongoing conspiracy to commit a crime or a series of factually-connected crimes.

## **2.2-3706.2 Administrative and tactical records of law enforcement agencies.**

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Records, to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communications devices provided to the agency's personnel for use in the performance of their official duties.

2. Records, to the extent that they disclose information related to undercover operations or protective details that would reveal the staffing, logistics or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the costs or expenses associated with undercover operations or protective details.

3. Records relating to specific tactical plans, to the extent that the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public.

4. Records of background investigations of applicants for law enforcement agency employment.

5. Records of an administrative investigation relating to allegations of wrongdoing by an employee of a state or local law-enforcement agency, including but not limited to investigations conducted by (i) the inspector general of the Department of Corrections appointed pursuant to § 53.1-16, (ii) the inspector general of the Department of Juvenile Justice appointed pursuant to §66-3.1, or (iii) a campus police department established pursuant to § 23-232. Nothing in this subdivision shall operate to allow the withholding of information concerning such an investigation from a person who is the subject of such investigation, or where applicable from such person's next-of-kin, when the investigation has been concluded.

6. Records relating to neighborhood watch programs to the extent such records include the names, addresses, and operating schedules of individual participants in such programs, where such information has been provided to the law enforcement agency in exchange for a promise of anonymity.

7. Records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.

8. Records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et

seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1.

ctm

5/20/2011