

The Virginia Freedom of Information Act (FOIA), originally passed in 1968, is designed to foster "open government" so that public records are generally ~ and freely - accessible to the general public. Unlike most other states, however, Virginia's FOIA excludes criminal investigative records from disclosure.

Virginia law enforcement officials "may" disclose these records in their discretion. They are not required to give a reason for withholding the information and there is no statutory guidance as to whether or when to release or withhold the records. Some jurisdictions do grant requests for release of this information, but many have a blanket policy of not releasing criminal investigative records altogether.

Even when an investigation or prosecution has long been concluded, and no discernable harm can come from release of the records, they may still be kept secret from the public at the discretion of officials in custody of the records. Most states do release criminal investigative files so Virginia is an outlier in withholding these records from the public under FOIA.

Criminal investigative records are available by subpoena to a party in an ongoing court case, if relevant to that case. But the general public - and the media - are not entitled to see these records as a matter of right under FOIA.

A bill before the Virginia Freedom of Information Council to allow the release of criminal investigative files under FOIA when a case is no longer "active or ongoing" is currently being studied. Safeguards in FOIA protect against release of private or confidential personal matters, such as identifying-information of witnesses or victims who have been promised confidentiality or victims of a sex offense. Safeguards in FOIA also cover law enforcement security concerns, such as protecting the identity of undercover officers and investigative techniques or procedures which could jeopardize ongoing criminal investigations.

Since safeguards are provided for protecting the legitimate privacy interests of victims and witnesses and for protecting the security of law enforcement personnel and the integrity of law enforcement activities, there is no reason why criminal investigative records should be withheld from public scrutiny, at least when a criminal case is no longer ongoing.

The Freedom of Information Act is designed to provide "sunshine" on government activities. Public scrutiny serves both to deter and prevent misconduct and to reveal misconduct when it occurs. Sunshine also sheds light, and thus educates the public, on government activities. Law enforcement authorities perform a crucial public service and the public can benefit from seeing their work and successes. When there are rare instances of misconduct, misjudgment or cover-up, the public needs

and deserves to know this also. Law enforcement officials are, after all, accountable to the public like all other public servants.

There are times when the public has an interest in learning more than authorities may want to reveal about a criminal investigation. This may occur, for example, in the case of a shooting by an officer of an unarmed civilian, the conviction of an innocent person by the withholding of crucial evidence, or in any number of other circumstances. The public may only be satisfied that justice has been done in a particular case when it can assess for itself information which is only in the hands of the authorities.

Maintaining the unfettered discretion of law enforcement officials to withhold records pertaining to public matters - especially after a case is concluded - cannot be justified. No evidence has been shown that releasing this information would harm law enforcement or the legitimate privacy rights of witnesses and victims under the bill being considered by the FOIA Council.

All other public officials are subject to FOIA, and our law enforcement authorities - who play an especially sensitive and powerful role in protecting public safety and the rights of citizens - should not be wholly exempt from the open government requirements of FOIA. Such openness would also serve to educate the public about the difficult tasks they do and the personal risks they often take. This in turn would lead the public have even greater appreciation and respect for our law enforcement authorities, which they deserve for the important work they do.

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