

National Landscape: Public Access to Criminal Investigative Files

| | Limited Disclosure Similar to Current VA law. | Active cases: Non-disclosure; Inactive: Disclosure | Disclosure for Active & Inactive Cases | |
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| State | Statute/Case Law | 1) Are criminal investigative records presumed public unless blocked by court? OR 2) Are records limited/not public? | 2) Distinction b/w Open & Closed Investigations | Does it mirror federal statute? |
| ALABAMA | Ala. Code § 12-21-3.1(b) | (2) <u>Active: Non-disclosure; Inactive: Non-disclosure.</u> "Law enforcement "investigative reports and related investigatory material" are not public records. Ala. Code § 12-21-3.1(b). | No distinction b/w open/closed. | |
| ALASKA | Alaska Stat. Ann. § 40.25.120. Basey v. State, Department of Public Safety. | (1) <u>Active/Inactive presumed disclosure</u> Disclosure unless court finds records "could reasonably be expected" to interfere w/law enforcement proceedings. | No distinction bw open/closed, but all closed case files would be accessible b/c would not be expected to interfere w/law enforcement proceedings. | Yes. (6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness; (D) could reasonably be expected to disclose the identity of a confidential source; (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions; (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or (G) could reasonably be expected to endanger the life or physical safety of an individual. |

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| ARIZONA | Cox Arizona Publications Inc. v. Collins, 175 Ariz. 11, 14, 852 P.2d 1194, 1998 (1993) | (1) <u>Active/Inactive presumed disclosure court order can block.</u> Agencies must make showing in court that disclosure would violate confidentiality/privacy or be detrimental to best interests of the state. "can specifically demonstrate how documents would violate rights, privacy/confidentiality, or would be detrimental | <u>No distinction b/w open/closed cases.</u> | <u>No</u> |
| ARKANSAS | Ark. Code Ann. § 25-19-105(b)(6) | 1) <u>Active: Non-disclosure; Inactive: Presumed Disclosure:</u> Cases are "closed" when police close case by administrative action or prosecutor decides not to pursue criminal charges. | <u>Open Case:</u> Exemption for "undisclosed investigations" of suspected criminal activity. <u>Closed:</u> All materials. Police closed case by administrative action or when prosecuting attorney decides not to pursue criminal charges. Court can hold hearing to determine if agency is taking action for further investigation. <i>Dep't of Ark. State Police v. Keech Law Firm, P.A., 2017 Ark. L.42-516-C.W.21265 (2017)</i> | <u>No</u> |
| CALIFORNIA | Government Code. Cal. Gov't Code § 6254(f). | (2) <u>Active/Inactive non-disclosure.</u> Investigatory records exempt, criminal incident reports must be disclosed. | <u>No distinction b/w open/closed.</u> | <u>No</u> |
| COLORADO | Colo Rev. Stat. § 24-72-304(1) | (2) <u>Active/Inactive at agency discretion.</u> Investigatory records are subject to public inspection unless, in the opinion of the records custodian, their disclosure would be "contrary to the public interest." See Pretash v. City of Leadville, 715 P.2d 1272 (Colo. App. 1985) | <u>No distinction b/w open/closed.</u> | <u>No</u> |

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| CONNECTICUT | Conn. Gen. Stat. § 1-210 | <p><u>Active/Inactive presumed disclosure court order can block.</u> Investigative records must be disclosed "absent evidentiary showing that the records were to be used in a prospective law enforcement action and that the disclosure of the records would be prejudicial to such action." <i>Department of Public Safety, Div. of State Police v. Freedom of Information Com'n</i> (1998) 720 A.2d 268, 51 Conn.App. 100. Exemption for Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-</p> | No distinction b/w open/closed cases. | No |

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| DELAWARE | Del. Code Ann. tit. 29, § 1000 | <p>Active/Inactive non-disclosure. Exemptions for (3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;</p> <p>(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of the person's personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;</p> <p>Del. Code Ann. tit. 29, § 10002 (West)</p> | Not specified | <u>No</u> |
| FLORIDA | Fla. Stat. § 119.011(3)(a), (b) and (c), (2008) | <p>1) Active non-disclosure, Inactive presumed disclosure.. Investigative information is considered active "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.</p> | <p>Open: Investigative information is considered active "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Fla. Stat. § 119.011(3)(d)(2) (2008).</p> <p>Closed: All materials available in closed investigations.</p> | <u>No</u> |

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| GEORGIA | Ga. Code Ann. § 50-18-72 | <p>(2) Active non-disclosure, Inactive presumed disclosure, must disclose initial arrest & incident reports. Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; Ga. Code Ann. § 50-18-72 (West)</p> | <p>Closed: an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated."</p> | <p>Partially (a) Public disclosure shall not be required for records that are:</p> <ul style="list-style-type: none"> (1) Specifically required by federal statute or regulation to be kept confidential; (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy; (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation; (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or |
| HAWAII | Haw. Rev. Stat. § 92F-14(b)(2) | <p>(1) Limited disclosure. An agency is not required by this part to grant an individual access to personal records, or information in such records: (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of: (A) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.Haw. Rev. Stat. Ann. § 92F-22 (West)</p> | <p>No distinction b/w open/closed cases.</p> | NO |

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| IDAHO | Idaho Code § 74-105 | <p>(2) Active non-disclosure, Inactive presumed disclosure: Court arbitrates disputes and burden is on withholding agency to prove why items should not be released. (1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would: (a) Interfere with enforcement proceedings; (4) Whenever it is made to appear by verified petition to the district court of the county where the records or some part thereof are situated that certain investigative records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties, and such oral argument and additional evidence as the court may allow. Idaho Code Ann. § 74-124 (West)</p> | <p><u>Closed case:</u> "An inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f) of this section." Idaho Code § 74-124(3)</p> | <p>Yes. (1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:</p> <ul style="list-style-type: none"> (a) Interfere with enforcement proceedings; (b) Deprive a person of a right to a fair trial or an impartial adjudication; (c) Constitute an unwarranted invasion of personal privacy; (d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source; (e) Disclose investigative techniques and procedures; (f) Endanger the life or physical safety of law enforcement personnel; or (g) Disclose the identity of a reporting party maintained by any law enforcement entity or the department of health and welfare relating to the investigation of child abuse, neglect or abandonment unless the reporting party consents in writing to the disclosure or the disclosure of the reporting party's identity is required in any administrative or judicial proceeding.Idaho Code Ann. § 74-124(3) |

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| ILLINOIS | 5 ILCS 140/7(1)(d). | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>"unless release of the records would compromise an ongoing or reasonably contemplated investigation. 5 ILCS 140/7(1)(d). Broad definition of "ongoing" Village could assert exemption to request made under Illinois Freedom of Information Act (FOIA) over records of other public bodies, in action brought by requester after village, Illinois State Police, county state's attorney's office, county medical examiner, and city police department declined to turn over documents relating to FOIA request for information regarding murder investigation; numerous public bodies had participated in investigation, and State Police resources had assisted village in investigation in past year. Kelly v. Village of Kenilworth, Ill.App. 1 Dist.2019, 2019 WL 7572976. Records Key Number 60</p> | <p><u>Broad definition of "ongoing" investigations</u></p> <p>Village could assert exemption to request made under Illinois Freedom of Information Act (FOIA) over records of other public bodies, in action brought by requester after village, Illinois State Police, county state's attorney's office, county medical examiner, and city police department declined to turn over documents relating to FOIA request for information regarding murder investigation; numerous public bodies had participated in investigation, and State Police resources had assisted village in investigation in past year.</p> <p>Kelly v. Village of Kenilworth, Ill.App. 1 Dist.2019, 2019 WL 7572976. Records Key Number 60</p> | <u>No</u> |
| INDIANA | Indiana Code Section 5-14-3-4(b)(1), | (1) Active/Inactive Non-disclosure. At agency discretion, access to investigatory records of law enforcement agencies may be provided or denied at the agency's discretion. The statute does not distinguish between active or closed investigations. Indiana Code Section 5-14-3-4(b)(1), | No distinction b/w open/closed cases. | <u>No</u> |

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| IOWA | Iowa Code Ann. § 22.7 | (1) Active/Inactive Non-disclosure. Criminal investigative files generally closed to public if that information is part of an ongoing investigation. | Does not define "ongoing investigation." | <u>No</u> |
| KANSAS | K.S.A. 45-221(a)(10). | Active/Inactive Non-disclosure. Criminal investigative files generally closed to public. Criminal investigation records are exempt unless court finds that release: 1) is in public interest, 2) would not interfere w/prospective law enforcement action, 3) would not reveal confidential source, 4) would not reveal confidential investigative technique, 5) would not endanger life or safety of individuals, 6) would not reveal identity of victim of sexual offense. | No. definition for "would not interfere in prospective law enforcement investigation. | Yes, but burden of proof is on requestor. Criminal investigation records are exempt unless court finds that release: 1) is in public interest, 2) would not interfere w/prospective law enforcement action, 3) would not reveal confidential source, 4) would not reveal confidential investigative technique, 5) would not endanger life or safety of individuals, 6) would not reveal identity of victim of sexual offense. |
| KENTUCKY | Ky. Rev. Stat. 61.878(1)(h) | Active non-disclosure, Inactive presumed disclosure. Exemption for records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations <u>if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication.</u> Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action KRS 61.870 to 61.884; | Yes, but no clear limit on 'prospective law enforcement action.'. Case law suggests that even post-conviction falls into category of "prospective law enforcement action or administrative adjudication." <i>A police department properly denies a request to inspect its investigative files, pursuant to KRS 61.878(1)(f), where the case out of which they arose is not final because of the defendant's intention to seek post-conviction relief. OAG 91-57</i> | <u>No</u> |

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| LOUISIANA | La. Rev. Stat. Ann. § 44:3(A)(l), (4) | <u>Active non-disclosure, Inactive presumed disclosure.</u> | <p>Records of active investigations are exempt, but accessible "after pending/reasonably anticipated litigation is finally adjudicated or settled."</p> <p><u>Yes</u> Records of closed investigations are public records only after pending or reasonably anticipated litigation is finally adjudicated or settled. La. Rev. Stat. Ann. § 44:3(A)(l). <i>In re Matter Under Investigation</i>, 15 So.2d 972, 992 (La. 2009) (determination of whether criminal litigation is "reasonably anticipated" must be made on case-by-case basis in contradictory hearing with opportunity to present evidence and examine witnesses).</p> | <u>No</u> |

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| MAINE | ME ST T. 16 § 804 | <p><u>Active/Inactive presumed disclosure court order can block.</u> Presumption of disclosure unless reasonable possibility that release would "Interfere w/criminal law enforcement proceedings," or with civil proceedings conducted by district attorney or AG."</p> | <p>Exemption for disclosure that would "interfere w/criminal law enforcement proceeding.</p> | <p>Yes. Except as provided in sections 805 and 806, a record that is or contains intelligence and investigative record information is confidential and may not be disseminated by a Maine criminal justice agency to any person or public or private entity if there is a reasonable possibility that public release or inspection of the record would:</p> <ul style="list-style-type: none"> 1. Interfere with criminal law enforcement proceedings. Interfere with law enforcement proceedings relating to crimes; 2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury; 3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy; 4. Disclose confidential source. Disclose the identity of a confidential source; 5. Disclose confidential information. Disclose confidential information furnished only by a confidential source; 7. Disclose investigative techniques or security plans. Disclose investigative techniques and procedures or security plans and procedures not known by the general public; 8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel; 9. Disclose statutorily designated confidential information. Disclose information designated confidential by statute; |

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| MARYLAND | MD GEN PROVIS § 4-332 | <p>(1) Active/Inactive presumed disclosure. court order can block. . Custodian has burden of proving info is exempt. Closed cases allow complete access. A custodian may deny access to a person in interest only to the extent that disclosure would interfere with a valid and proper law enforcement proceeding, deprive another person of a right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose an investigative technique, prejudice an investigation, or endanger the life or physical safety of an individual. § 4-351(b). Because of a person in interest's favored status, a custodian must point out precisely which of the seven grounds enumerated in § 4-351(b) justify withholding of an investigatory record and explain precisely why it would do so. <i>Blythe v. State</i>, 161 Md. App. 492, 531, 870 A.2d 1246, cert. granted, 388 Md. 97, 879 A.2d 42 (2005)); see also PIA Manual, at 3-36.</p> | <p>Yes. No definition of 'open v. closed investigation' but ruling "<i>Once an investigation has been closed, disclosure is considered less likely to be "contrary to the public interest."</i> <i>City of Frederick v. Randall Family, LLC</i>, 154 Md. App. 543, 562-567, 841 A.2d 10 (2004), <i>Prince George's County v. Washington Post Co.</i>, 149 Md. App. 289, 33, 815 A.2d 859 (2003).</p> | <p>Yes. A custodian may deny access to a person in interest only to the extent that disclosure would interfere with a valid and proper law enforcement proceeding, deprive another person of a right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose an investigative technique, prejudice an investigation, or endanger the life or physical safety of an individual.</p> |

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| MASSACHUSETTS | G. L. c. 4, § 7(26)(f) | <p>(1) <u>Active/Inactive presumed disclosure.</u> Agency has burden of proving release would prejudice investigative efforts. There is exemption for "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. The exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed. Exemption (f) does not, however, create a blanket exemption for all records that investigative officials create or maintain. A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities.</p> | No. | <u>No</u> |

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| MICHIGAN | MI ST 15.243 | <p>(2) (2) Active non-disclosure, Inactive presumed disclosure. <i>Law enforcement must show how specific records would interfere w/pending investigation.</i> To show that disclosure of investigation records would interfere with the enforcement proceedings, “the government must show, by more than a conclusory statement, how the particular kinds of records would interfere with a pending enforcement investigation.” Evening News Ass'n v. City of Troy, 417 Mich. 481, 497 (1983); see also Mich. Comp. Laws § 15.231.</p> | <p>Yes. Investigation does not continue to be “open,” for purposes of Freedom of Information Act's (FOIA) exception for documents relating to law enforcement investigation, until the expiration of the applicable period of limitation for criminal prosecution without active, ongoing law enforcement investigation. Herald Co., Inc. v. City of Kalamazoo (1998) 581 N.W.2d 295, 229 Mich.App. 376.</p> | <p>Yes. Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:</p> <ul style="list-style-type: none"> (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following: <ul style="list-style-type: none"> (i) Interfere with law enforcement proceedings. (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication. (iii) Constitute an unwarranted invasion of personal privacy. (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source. (v) Disclose law enforcement investigative techniques or procedures. (vi) Endanger the life or physical safety of law enforcement personnel. Mich. Comp. Laws Ann. § 15.243 (West) |

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| MINNESOTA | MN ST § 13.82 | <p>(2) Active non-disclosure, Inactive presumed disclosure. "Investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility are confidential or protected nonpublic while the investigation is active. <u>Inactive investigative data are public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 17.</u> Images and recordings, including photographs, video, and audio records, which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the images and recordings shall be disclosed to any person requesting access to the inactive investigative file."</p> <p>Minn. Stat. Ann. § 13.82 (West). During the time when an investigation is active, any person may bring an action in the district court located in the county where the data are being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court</p> | <p>Yes. Inactive: (a) prosecutor decision not to pursue the case; (b) expiration of time to bring a charge/file a complaint under statute of limitations or 30 years from criminal offense; (c) exhaustion of expiration of all rights of appeal by convicted person.</p> | No |
| MISSISSIPPI | Miss. Code. Ann. § 25-61-12 (West) | <p>(2) Active/Inactive Non-disclosure. (2)(a) When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.Miss. Code. Ann. § 25-61-12 (West)</p> | <p>No.</p> | No |

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| MISSOURI | Mo. Ann. Stat. § 610.100 | <p>(1) Active case non-disclosure/Inactive: Disclosure.</p> <p>(1) Each law enforcement agency of this state, of any county, and of any municipality shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records. (2) Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, mobile video recordings and investigative reports of all law enforcement agencies and any reports or records in the possession of the department of health and senior services' Missouri state public health laboratory, which were the result of testing performed at the request of any municipal, county, state, or federal law enforcement agency, are closed records until the investigation becomes inactive. 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques,</p> | <p>Yes. "Inactive", an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:</p> <ul style="list-style-type: none"> (a) A decision by the law enforcement agency not to pursue the case; (b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs; (c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons; <p>Mo. Ann. Stat. § 610.100 (West)</p> | No |

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| MONTANA | Mont. Code Ann. §§ 44-5-101 to -515 | (2) Active/Inactive Non-disclosure. Investigative records, active and closed, computation of criminal histories, confessions, confidential informants, and police techniques are all confidential criminal justice information subject to the balancing test. See also Montana Criminal Justice Information Act of 1979, Mont. Code Ann. §§ 44-5-101 to -515; Engrav v. Cragun, 769 P.2d 1224 (1989); 42 A.G. Op. 119 (1988). | No | No |
| NEBRASKA | Neb. Rev. Stat. Ann. § 84-712.05 | (2) Active/Inactive Non-disclosure. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records: (5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training,Neb. Rev. Stat. Ann. § 84-712.05 (a)(v) | No | No |

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| NEVADA | N.R.S. 239.010. 11Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990) | <p>(1) <u>Active/Inactive presumed disclosure Under statute which provides for disclosure of public records, unless privacy or law enforcement policy justifications meaning:</u> 1) pending/anticipated criminal proceedings, 2) confidential sources/techniques, 3) possibility of denying fair trial, 4) jeopardizing law enforcement personnel.</p> <p>balancing of interests involved required disclosure of police investigative report on the City Attorney's dismissal of charges against defendant, which dismissal was opposed by police; general policy is in favor of open government, and there were no privacy or law enforcement policy justifications for nondisclosure, as there was no pending or anticipated criminal proceeding, there were no confidential sources or investigative techniques to protect, there was no possibility of denying someone fair trial, and there was no potential jeopardy to law enforcement personnel.</p> <p>N.R.S. 239.010.</p> <p>11Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990)</p> | No. | <p><u>Yes.</u> Under statute which provides for disclosure of public records, unless privacy or law enforcement policy justifications meaning: 1) pending/anticipated criminal proceedings, 2) confidential sources/techniques, 3) possibility of denying fair trial, 4) jeopardizing law enforcement personnel. N.R.S. 239.010.</p> <p>11Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990)</p> |

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| NEW HAMPSHIRE | Murray v. New Hampshire Division of State Police, 913 A.2d 737, 740 (N.H. 2006) | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>Under FOIA, an agency may exempt from disclosure: records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source,(F) could reasonably be expected to endanger the life or physical safety of any individual . . . <i>Murray v. New Hampshire Division of State Police, 913 A.2d 737, 740 (N.H. 2006)</i></p> | <p>Yes. Could reasonably be expected to interfere with law enforcement proceeding.</p> | <p>Yes. Under FOIA, an agency may exempt from disclosure:</p> <p>records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source,(F) could reasonably be expected to endanger the life or physical safety of any individual . . . <i>Murray v. New Hampshire Division of State Police, 913 A.2d 737, 740 (N.H. 2006)</i></p> |
| NEW JERSEY | N.J.S.A. 47:1A-1.1 | <p>(2) <u>Active/Inactive Non-disclosure.</u>Nondisclosure presumed for criminal investigative files. Police incident reports must be disclosed. N.J.S.A. 47:1A-1.1 defines "Criminal Investigatory Record" as "a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding." N.J.S.A. 47:1A-1.1 also states that "Criminal Investigatory Records" are not "Government Records."</p> | <p>No.</p> | <p>No</p> |

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| NEW MEXICO | N.M. Stat. Ann. § 14-2-1 | <p>(1) Active/Inactive presumed disclosure. Exemptions to disclosure include portions of records that reveal 1) confidential sources, methods, information, 2) before charges are filed, name/address/contact info/personal identifier info for individuals accused but not charged, or victims or non-law enforcement witnesses for violent felonies of sexual assault, stalking. Applies to inactive and active investigations.</p> <p>N.M. Stat. Ann. § 14-2-1 (West)</p> | <p>No. Statute states exemptions apply to inactive matters or closed investigations to the extent that they contain the information listed in this subsection;</p> <p>N.M. Stat. Ann. § 14-2-1 (West)</p> | No |
| NEW YORK | N.Y. Pub. Off. Law § 87(2)(e)(i) | <p>(2) Active cases: Non-disclosure; Inactive: Disclosure</p> <p>An agency may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings.</p> <p>N.Y. Pub. Off. Law § 87(2)(e)(i) (McKinney 1988).</p> <p>The National Alliance v. New York City Police Department, No. 21553/91 (Sup. Ct., New York Cty., March 10, 1992) (granting access to investigative records in absence of showing that disclosure would interfere with investigation);</p> | <p>Yes. Could reasonably be expected to interfere with law enforcement proceeding.</p> | No |
| NORTH CAROLINA | G.S. § 132-1.4© | <p>(1) Active/Inactive presumed disclosure. the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. N.C. Gen. Stat. Ann. § 132-1.4 However, once law enforcement agency transfers evidence to district attorney for prosecution, the Public Records Law.</p> | <p>No.</p> | No |

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| NORTH DAKOTA | N.D. Cent. Code Ann. § 44-04-18.7 | (1) Active non-disclosure, Inactive presumed disclosure. "Active" means: reasonable good faith anticipation of securing an arrest or prosecution in foreseeable future. Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. N.D. Cent. Code Ann. § 44-04-18.7 (West) | Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable good-faith anticipation of securing an arrest or prosecution in the foreseeable | <u>No</u> |
| OHIO | OH ST § 149.43 | (1) Active non-disclosure, Inactive presumed disclosure. For active investigations/case, everything except investigatory work produce is accessible. The exemption for specific investigatory work-product ceases to apply to investigatory records once the trial for which the records were generated is over. State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 89 N.E.3d 598, 2016-Ohio-8394 | Once trial ends, investigatory records must be disclosed. The exemption for specific investigatory work-product ceases to apply to investigatory records once the trial for which the records were generated is over. State | <u>No</u> |
| OKLAHOMA | O.S. § 24A.12. | Active/Inactive Non-disclosure. Open records law lists specific items that must be disclosed by law enforcement, which all relate to criminal incident reports, not investigative files "Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial." | <u>No.</u> | <u>No</u> |

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| OREGON | ORS 192.345(3) | <p>(2) Active cases: Non-disclosure; Inactive:</p> <p>Disclosure. Uses federal balancing test Where there was no possibility that disclosure of certain report would interfere with law enforcement proceedings or deprive a person of a fair trial, where the report dealt primarily with the conduct of public servants in the performance of their duties, where there was no evidence that the report contained confidential information, where nothing in the report revealed other than routine investigative procedures already well known to the public, and where there was no indication in the report that disclosure would endanger law enforcement personnel, report of sheriff's department following investigation of city police department was not exempt from disclosure. ORS 192.500(1)(c). Jensen v. Schiffman, 24 Or. App. 11, 544 P.2d 1048 (1976)</p> | <u>No.</u> | <p>Yes. Where there was no possibility that disclosure of certain report would interfere with law enforcement proceedings or deprive a person of a fair trial, where the report dealt primarily with the conduct of public servants in the performance of their duties, where there was no evidence that the report contained confidential information, where nothing in the report revealed other than routine investigative procedures already well known to the public, and where there was no indication in the report that disclosure would endanger law enforcement personnel, report of sheriff's department following investigation of city police department was not exempt from disclosure. ORS 192.500(1)(c). Jensen v. Schiffman, 24 Or. App. 11, 544 P.2d 1048 (1976)</p> |

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| PENNSYLVANIA | 65 Pa. Stat. Ann. § 67.708 | <p>(1) Limited disclosure. 16) A record of an agency relating to or resulting in a criminal investigation, including:</p> <ul style="list-style-type: none"> (i) Complaints of potential criminal conduct other than a private criminal complaint. (ii) Investigative materials, notes, correspondence, videos and reports. (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised. (iv) A record that includes information made confidential by law or court order. (v) Victim information, including any information that would jeopardize the safety of the victim. (vi) A record that, if disclosed, would do any of the following: <ul style="list-style-type: none"> (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges. (B) Deprive a person of the right to a fair trial or an impartial adjudication. (C) Impair the ability to locate a defendant or codefendant. (D) Hinder an agency's ability to secure an arrest, prosecution or conviction. (E) Endanger the life or physical safety of an individual. <p>65 Pa. Stat. Ann. § 67.708 (West)</p> | <p>Yes. Under the Law, Pennsylvania courts have clearly distinguished between open and closed “investigatory records.” See, e.g., Pa. State Police v. Office of Open Records, 5 A.3d 473 (Pa. Commw. Ct. 2010). Therefore, closed investigations may fall within the 708(b)(16)(vi) exemption.</p> | <p>No.</p> |

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| RHODE ISLAND | R.I. Gen. Laws § 38-2-2(4)(D). | <p><u>Active/Inactive Non-disclosure. Agency has discretion as to whether an exemption applies.</u></p> <p>Records for criminal law enforcement including “all records relating to the investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency” are generally excluded from disclosure only to the extent that disclosure could interfere with criminal investigation or enforcement proceedings, would deprive a person of a fair trial or impartial proceedings, could reasonably be expected to disclose a confidential source, would disclose investigation or prosecution techniques or procedures, or could endanger the life or safety of an individual.</p> <p>R.I. Gen. Laws § 38-2-2(4)(D).</p> | No. | <p><u>Yes.</u> (D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) Could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings; (b) Would deprive a person of a right to a fair trial or an impartial adjudication; (c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (d) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis, or the information furnished by a confidential source; (e) Would disclose techniques and procedures for law</p> |

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| SOUTH CAROLINA | S.C. Code Ann. § 30-4-40(a)(3). | <p><u>Active non-disclosure, Inactive presumed disclosure.</u> Exemption for "records, video, audio or other information compiled for law enforcement purposes, but only to the extent it would 1) interfere w/prospective law enforcement proceeding, 2) deprive right to fair trial, 3) personal privacy, 4) disclose identity of confidential informant, 5) disclose law enforcement techniques.</p> | <p>Yes. Exemption if disclosure would "interfere w/prospective law enforcement proceeding.:</p> | <p>Yes. A public body may but is not required to exempt from disclosure the following information: (3) Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) would interfere with a prospective law enforcement proceeding; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) would constitute an unreasonable invasion of personal privacy; (D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source; (E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law; (F) would endanger the life or physical safety of any individual; (G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed</p> |

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| SOUTH DAKOTA | SDCL §§1-27-1.5 (5) and 23-5 | <p>Active/Inactive Non-disclosure. Investigatory records are presumptively closed. SDCL §§1-27-1.5 (5) and 23-5, generally(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. However, this subdivision does not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person, and this subdivision does not apply to a 911 recording or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure. This law in no way abrogates or changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information from confidential informants; S.D. Codified Laws § 1-27-1.5.</p> | <p>No. In active investigations they are closed. SDCL §§1-27-1.5 (5) and 23-5-10. The basic open records law does not specifically distinguish between active and closed investigations. SDCL §1-27-1.5 (5).</p> | No |
| TENNESSEE | Tenn. R. Crim. P. 16(a)(2). | <p>Active non-disclosure, Inactive presumed disclosure. Records related to active investigations are closed. Records related to closed investigations are open. Memphis Publishing Co. v. Holt, 710 S.W.2d 513 (Tenn. 1986).</p> | | No |

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| TEXAS | Tex. Gov't Code § 552.108 | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:</p> <ul style="list-style-type: none"> (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; <p>To prevent disclosure of public records under Texas Public Information Act (TPIA) exception protecting records of law enforcement agencies and prosecutors that deal with detection, investigation, and prosecution of crime, governmental body must demonstrate that release of requested information will unduly interfere with law enforcement and crime prevention. City of San Antonio v. San Antonio Exp.-News (App. 4 Dist. 2000) 47 S.W.3d 556,</p> | <p>No. The Texas Supreme Court concluded that the "statute's plain language does not discriminate between 'open' and 'closed' files," holding that Section 552.108's "blanket exemption" does not require district attorneys to disclose internal records, whether open or closed, that deal with detection, investigation, or prosecution of crime. Holmes v. Morales, 924 S.W.2d 920, 925 (Tex. 1996).</p> | No |

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| UTAH | Utah Code § 63G-2-305(10) | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>Access to investigatory records may be restricted if release of such records (1) reasonably could be expected to interfere with the investigation; (2) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; (3) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (4) reasonably could be expected to disclose a confidential source's identity; or (5) reasonably could be expected to disclose confidential investigative or audit techniques. Utah Code § 63G-2-305(10).</p> | <p>Yes. Exemption if disclosure would "interfere w/prospective law enforcement proceeding.:</p> | <p>Yes. The following records are protected if properly classified by a governmental entity:(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records: (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes; (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts; (11) records the disclosure of which would jeopardize the life or safety of an individual; Utah Code Ann. § 63G-2-305 (West)</p> |

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| VERMONT | V.S.A. § 317(c)(5). | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>Records dealing with the detection and investigation of crime are exempt from disclosure, but only to the extent that the production of such records:“(i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication;(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source,</p> | <p>Yes. Exemption if disclosure would "interfere w/prospective law enforcement proceeding.:</p> | <p>Yes. (5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:</p> <ul style="list-style-type: none"> (i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law; (vi) could reasonably be expected to endanger the life or physical safety of any individual. Vt. Stat. Ann. tit. 1, § 317 (West) |
| WASHINGTON | RCW 42.56.240(1). | <p><u>Active non-disclosure, Inactive presumed disclosure.</u></p> <p>Records relating to crime investigations are presumptively disclosable upon request under the Public Records Act (PRA) where a suspect has been arrested and the matter has been referred to the prosecutor for a charging decision. Does v. King County (2015) 192 Wash.App. 10, 366 P.3d 936. Records Key Number 60</p> | <p>Yes. The exemption covers only ongoing investigations, Ashley v. Public Disclosure Comm'n, 16 Wn. App. 830, 560 P.2d 1156, review denied, 89 Wn.2d 1010 (1977), and once the investigation is complete, the records are open. Hearst 90</p> | No |

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| WEST VIRGINIA | W. Va. Code Ann. § 29B-1-4 | <p>Active/Inactive Non-disclosure. (a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:</p> <p>(4)(A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement. W. Va. Code Ann. § 29B-1-4 (West)</p> | <u>No.</u> | <u>No</u> |
| WISCONSIN | Wis. Stat. § 48.396(1). | <p>Active non-disclosure, Inactive presumed disclosure. Non-disclosure may be justified under the balancing test, on a case-by-case basis, if the custodian can show "that disclosure would interfere with an ongoing investigation." Id., ¶ 20. When an investigation is closed and no prosecution or disciplinary action is either ongoing or contemplated, there is no risk that releasing a police report will interfere with an enforcement proceeding or jeopardize anyone's right to a fair trial. Linzmeyer v. Forcey, 2002 WI 84 ¶ 39, 254 Wis. 2d 306, 331, 646 N.W.2d 811, 821.</p> | Yes. Exemption if disclosure would "interfere with ongoing investigation." | <u>No</u> |
| WYOMING | Wyo. Stat. Ann. § 16-4-203 | <p>Limited disclosure. (b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:</p> <p>(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;</p> <p>Wyo. Stat. Ann. § 16-4-203 (West)</p> | <u>No.</u> | <u>No</u> |