



MID-ATLANTIC
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Proposed Legislation for Virginia Freedom of Information Act Law Enforcement Criminal Incident Information & Criminal Investigative Files

§ 2.2-3706, Disclosure of law-enforcement and criminal records; limitations.

A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested in accordance with the provisions of this chapter, except that the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted pursuant to § [19.2-11.2](#):

1. Criminal incident information & investigative files.

a. Criminal incident information relating to felony offenses contained in any report, notes, electronic communication, or other document, including filings through the incident-based reporting system, which shall include:

- (i) A general description of the criminal activity reported;
- (ii) The date and time the alleged crime was committed;
- (iii) The general location where the alleged crime was committed;
- (iii) The identity of the investigating officer or other point of contact;
- (iv) A ~~general~~ description of any injuries suffered or property damaged or stolen; *and*
- (v) *Any diagrams related to the alleged crime or the location where the alleged crime was committed*

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision 1 (a).

b. Criminal investigative files, *meaning any documents and information, including complaints, court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, correspondence, reports, witness statements, or evidence* **related to a law enforcement proceeding or investigation that is not ongoing, as defined in Subsection (e).**

c. Subsection (a) and (b) do not apply if a court in the locality in which the charges can be or have been brought finds by **a preponderance of the evidence** *that* the release of such information:

- (i) could reasonably be expected to interfere with an ongoing law enforcement investigations or 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.**



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(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 prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) could reasonably be expected to endanger the life or physical safety of any individual;

- d. Nothing in subdivision 1(c) shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage.
- e. **An investigation or proceeding shall be considered "ongoing" for purposes of subdivision 1 (b) and (c) as long as the case has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and the case would be jeopardized by the premature release of that evidence.**
- f. Nothing in this subdivision shall prohibit the disclosure of current anonymized, aggregate location and demographic data collected pursuant to § 52-30.2 or similar data documenting law-enforcement officer encounters with members of the public.
- g. No photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified shall be released to anyone except (i) the victim; (ii) his immediate family, as defined in subdivision 4, if the victim is deceased; or (iii) the parent or guardian of the victim, if the victim is a minor.