

Legislative History of Criminal Records Provisions
in the Virginia Freedom of Information Act
from 2013 through 2024 (Code §§ 2.2-3706 and 2.2-3706.1)

Year	Bill Number (Act of Assembly)	Bill Summary	Notes
2013	SB 1264 (Stuart) (c. 695)	Freedom of Information Act; access to criminal and other records held by public bodies engaged in criminal law-enforcement activities. Reorganizes § 2.2-3706 of the Freedom of Information Act relating to access to criminal records and other records held by law-enforcement agencies. The only substantive changes in the bill are to (i) expand to the state law-enforcement agencies the ability to withhold portions of noncriminal incident information and (ii) allow law-enforcement agencies to make a verbal response for requests for criminal incident information. The bill also clarifies that personnel records of persons employed by a law-enforcement agency are not noncriminal records but subject to the personnel records and background investigation records exemptions. The bill contains technical amendments and is a recommendation of the Virginia Freedom of Information Advisory Council.	This legislation was recommended after three years of study by the Criminal Investigative Records Subcommittee of the FOIA Council from 2010 through 2012.
2016	SB 727 (McDougle) (c. 184)	Virginia Freedom of Information Act; public access to noncriminal records. Clarifies public access to noncriminal records maintained by public bodies engaged in criminal law-enforcement activities. The bill reverses an April 2015 Virginia Supreme Court decision in <i>Fitzgerald v. Loudoun County Sheriff's Office</i> , which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for	

		clarification of this exemption based on the <i>Fitzgerald</i> holding. This bill incorporates SB 676.	
2016	HB 1318 (Fowler) (c. 546)	Virginia Freedom of Information Act (FOIA); noncriminal incidents and reports. Clarifies that the FOIA exclusion for noncriminal incidents and reports applies to any public body that engages in criminal law-enforcement activities and does not rely on the definition of "noncriminal incidents records" in § 15.2-1722 of the Code of Virginia. The bill addresses a decision of the Virginia Supreme Court in <i>Fitzgerald v. Loudoun County Sheriff's Office</i> , which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the <i>Fitzgerald</i> holding.	SB 727 and HB 1318 address the same subject and are nearly identical, but HB 1318 inserted the words "mandatory disclosure" in subdivision 2 of § 2.2-3706 (which was subsequently recodified and now appears as subsection B of § 2.2-3706).
2017	SB 1102 (Surovell) (c. 828)	Virginia Freedom of Information Act; completed unattended death investigations; mandatory disclosure. Requires that records of completed unattended death investigations be released to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. The bill also defines "unattended death" and "immediate family member."	
2018	HB 909 (Robinson) (c. 48)	Virginia Freedom of Information Act; disclosure of law-enforcement and criminal records. Clarifies that the discretionary exemptions contained in the Freedom of Information Act pertaining to law-enforcement and criminal records may be used by any public body. Current law only permits such exemptions to be used by public bodies engaged in criminal law-enforcement activities. The bill also restricts the application of the discretionary exemption for those portions of noncriminal	

		<p>incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature, the release of which would jeopardize the safety or privacy of any person, to only those portions of noncriminal incident or other noncriminal investigative reports or materials that are in the possession of public bodies (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system. This bill is a recommendation of the Freedom of Information Advisory Council.</p>	
<p>2021, Sp. Session I</p>	<p>HB 2004 (Hurst) (c. 483)</p>	<p>Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. Adds criminal investigative files, defined in the bill, relating to a criminal investigation or proceeding that is not ongoing, also defined in the bill, to the types of law-enforcement and criminal records required to be released in accordance with the provisions of the Virginia Freedom of Information Act. Under current law, the release of criminal investigative files is discretionary. The bill provides that the mandatory release of criminal incident information relating to felony offenses and criminal investigative files shall not be required if the release of such information would likely effect certain results, outlined in the bill. The bill also extends the amount of additional time a public body has to respond, in the case of a request for certain criminal investigative files, from an additional seven work days to an additional 60 work days as long as the public body has communicated to the requester within the initial allowable five-work-day response period that it is not practically possible to provide the requested records or to determine whether they are available within</p>	<p>Created § 2.2-3706.1 as a new section.</p>

		the five-work-day period. The bill contains technical amendments. As introduced, this bill was a recommendation of the Virginia Freedom of Information Advisory Council.	
2022	HB 734 (Bell, R.) (c. 386)	Virginia Freedom of Information Act; disclosure of certain criminal records. Provides that (i) criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act, though they may be disclosed by the custodian of such records to certain individuals except as otherwise provided in the bill, and (ii) with the exception of disclosure to an attorney representing a petitioner or inspection by an attorney or a person proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon, no criminal investigative file or portion thereof shall be disclosed to any requester except (a) the victim; (b) the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation; or (c) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information. Upon receipt of notice that a public body has received a request for criminal investigative files, such persons shall have 14 days to file in an appropriate court for an injunction to prevent disclosure of the records and the time period within which the public body has to respond to the underlying request shall be tolled pending the notification process and any subsequent disposition by the court. The bill requires the court to consider certain information in	

		making its determination and provides that a public body shall be prohibited from responding to the request until at least 14 days have passed from the time notice was received by any such individual listed in clauses (a), (b), or (c) and shall not disclose any criminal investigative files if the court awards an injunction. This bill incorporates HB 890.	
2023	HB 1569 (Walker) (c. 420)	Virginia Freedom of Information Act; disclosure of personnel records. Clarifies that personnel records excluded from disclosure under the Virginia Freedom of Information Act include those of persons employed by (i) a public body engaged in emergency medical services or fire protection services, (ii) a law-enforcement agency, or (iii) an emergency 911 system or any other equivalent reporting system. The bill also contains technical amendments.	
2024	SB 204 (Diggs) (c. 580)	Virginia Freedom of Information Act; release of criminal investigative files exception. Exempts a victim's insurance company and attorney from the prohibition on releasing photographic, audio, video, or other records depicting such victim. The bill also permits a victim, a victim's immediate family members if the victim is deceased, a victim's parent or guardian, the victim's insurance company, or the victim's attorney to waive the 14-day period for a public body to respond to a request for criminal investigative files.	
2024	SB 215 (Perry) (c. 582)	Virginia Freedom of Information Act; removal of Virginia residency requirement for access to certain criminal investigation files. Removes the requirement that persons to whom non-ongoing criminal investigation files shall otherwise be disclosed be citizens of the Commonwealth. Current law limits disclosure of public records to individuals who are citizens of the Commonwealth unless a clear exception applies.	