

A Guide for Handling FOIA Requests for Records of 911 Calls

under the Virginia Freedom of Information Act



Prepared by the Virginia Freedom of Information Advisory Council

Policy Statement of the Virginia Freedom of Information Act (FOIA)

By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Unless a public body or its officers and employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.¹

Introduction

What do you do when someone requests a copy of a 911 call record?

FOIA states that "[r]ecords of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter." Va. Code § 2.2-3706 (E). Essentially, this means that 911 call records are subject to FOIA, but exemptions or prohibitions may apply to the release of some or all of the information in those records.

First, remember that the default rule under FOIA is that all public records must be disclosed upon request unless an exemption in law applies that allows the record to be withheld. There is

¹ See Subsection B of § 2.2-3700 of the Code of Virginia, the first section of the Virginia Freedom of Information Act.

no blanket exemption for 911 call records. Just as with other records, you have to look at the contents and the context to determine whether the record, or any part of it, is exempt. In order to help you make those determinations, some of the questions you will want to answer before responding to a request for 911 call records are outlined in this guide.

Analysis

What is the nature of the call — criminal or noncriminal?

Criminal records and noncriminal records are treated differently, so this is the first determination you make. Each type is addressed separately in this guide.

Criminal Call Records

If the call is criminal in nature, there are many different exemptions that may apply. A full list of all the possible exemptions is beyond the scope of this guide, but here are some of the ones most likely to apply to 911 call records:

- Criminal investigative files are defined as “complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence, relating to a criminal investigation or prosecution.” These files may be withheld generally, but if the matter is not ongoing, then these records must be released to certain parties with certain limited exceptions. Va. Code §§ 2.2-3706 (B)(1) and 2.2-3706.1 (C) and (D).
- The identity of any victim, witness, or undercover officer may be withheld. Va. Code § 2.2-3706 (B)(10) and § 2.2-3706.1 (G).
- The identity of any individual providing information about a crime or criminal activity under a promise of anonymity (i.e., confidential informants) shall not be disclosed. Va. Code § 2.2-3706 (C).

Noncriminal Call Records

If the records are not about criminal matters, the general rule is that the call record is open, but you may withhold those portions of the record that contain personal, medical, or financial information to protect any person’s safety or privacy. Noncriminal incidents records include compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, and accidental deaths. Va. Code § 2.2-3706 (D).

Other Records

Generally, it is our understanding that there usually are various other records associated with a 911 call record, such as records that identify which dispatcher took the call and the time the call was received (computer aided dispatch or "CAD" information). Generally, these records are not exempt and must be disclosed upon request. Based on experience speaking with law-enforcement agencies and emergency call centers, it appears that these records are often kept separately from the audio record or written transcript of the 911 call itself, but sometimes they are kept together as a single record. Under FOIA, if a record contains portions that are exempt

and portions that are not, you may only withhold the portions that are exempt. The nonexempt portions must be released upon request.

Law Enforcement Records Analysis

The following series of questions generally apply to analyze any request for law-enforcement records, whether it involves 911 calls or other types of records.

1. Is the matter criminal or noncriminal?

2. If the matter is criminal, is it ongoing? Va. Code § 2.2-3706.1 (A) provides the following definition: "Ongoing" refers to a case in which the prosecution has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and such case would be jeopardized by the premature release of evidence.

- Ongoing: If the matter is ongoing, the criminal investigative file may be withheld pursuant to Va. Code §§ 2.2-3706 (B)(1) and 2.2-3706.1 (C).
- Not Ongoing: If the matter is not ongoing, the criminal investigative file still may be withheld from the general public pursuant to Va. Code §§ 2.2-3706 (B)(1) and 2.2-3706.1 (D), but § 2.2-3706.1 (D) requires criminal investigative files to be released to certain parties (generally, victims or victims' relatives and certain parties involved in post-conviction proceedings). However, even when release is required, certain exemptions such as those to protect the identities of victims, witnesses, undercover officers, or confidential informants may still apply. Please see our guide "Law Enforcement Records and the Freedom of Information Act" for details.

3. If the matter is noncriminal, does the record contain any personal, medical, or financial information?

- Yes: If the record has personal, medical, or financial information, would releasing that information jeopardize any person's safety or privacy? If it would, then you can redact out the personal, medical, or financial information before releasing the record pursuant to Va. Code § 2.2-3706 (D), but still must release the rest of the record. Otherwise, if no jeopardy to safety or privacy would occur, then release the record without redacting it.
- No: Release the record if it does not contain any personal, medical, or financial information.

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