LAW-ENFORCEMENT RECORDS and the FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Act (FOIA) has long afforded law-enforcement agencies in Virginia many broad exemptions from the mandatory release of information. FOIA contains ample provisions to safeguard information essential to the accomplishment of the law-enforcement mission. Adequate protection is also provided for sensitive information gathered by law-enforcement agencies in the course of conducting investigations of noncriminal matters. Before 2021, criminal investigative files were exempt from mandatory disclosure but could be released in the discretion of the custodian unless disclosure was prohibited by other law. In 2021, the General Assembly enacted a new law that required the release of criminal investigative files in matters that are no longer ongoing, with certain limited exceptions.[1] In 2022, the General Assembly amended these provisions once again to give the custodian discretion to release criminal investigative files that are not ongoing, provided that the victim or certain members of the victim's family are first notified and given an opportunity to file an injunction against release.[2] Additionally, the 2022 amendments require release of these records to the victim or certain members of the victim's family, as well as to certain attorneys and persons involved in certain post-conviction legal proceedings. In 2024, the General Assembly again amended the provisions concerning access to criminal investigative files by victims and certain others to allow access by persons who are not citizens of the Commonwealth, to allow victims to waive the waiting period for filing an injunction, and to allow victims' insurance companies and attorneys greater access.[3] Please see Part IV below for further details regarding access to

[1] 2021 Acts of Assembly, c. 483.
[2] 2022 Acts of Assembly, c. 386.
[3] 2024 Acts of Assembly, cc. 580 and 582.

criminal investigative files. In 2025, the General Assembly added prohibitions on the release of records that have been expunged or sealed unless dissemination is allowed under other laws; these prohibitions went into effect on July 1, 2026.[4]

With the ability to withhold much information comes the responsibility not to abuse that discretion. This can best be accomplished by adopting a "predisposition to disclose." Using this approach, an agency identifies only that information that must be withheld rather than that which must be released under FOIA. It is important to keep in mind that FOIA generally does not prohibit the release of any information.[5] Information that is exempted may be released at the agency's discretion, and frequently an agency may find that it serves its best interests to do so. Law enforcement benefits from improved community relations and public perception when citizens are informed to the maximum extent possible.

PART I—REQUIRED RELEASES

(Subsection A of § 2.2-3706 and subsection B of § 2.2-3706.1)

Public bodies engaged in criminal law-enforcement activities are required to release the following records when requested in accordance with the provisions of FOIA:

1. Information in the custody of law-enforcement officials relative to the **identity of any individual, other than a juvenile, who is arrested and charged and the status of the charge or arrest shall be released**. This includes felony, misdemeanor, and traffic arrests. Any chronological listing of adult arrests is a public document. However, reflecting federal mandates, Virginia law prohibits the dissemination of "criminal history record information" to individuals outside of the law-enforcement community. Generally, the release of arrest information is commonly understood to apply to "reasonably contemporaneous" arrests. Requestors seeking older information may also be directed to check court records, which are public;

[4] 2025 Acts of Assembly, cc. 634 and 671.
[5] Note that there are certain prohibitions on the release of records that apply in the law enforcement context, but most of them are found outside of FOIA itself (see Parts III and VIII).

2. **Adult arrestee photographs** taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in **felony** cases, until such time as the release of the photograph will no longer jeopardize the investigation;

3. **Records of completed unattended death investigations** 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. "Unattended death" is defined as a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated. "Immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200; and

4. **Criminal incident information relating to felony offenses.** Criminal incident information in accordance with subsection B of § 2.2-3706.1 includes information contained in any report, notes, electronic communication, or other document, including filings through an incident-based reporting system, which shall include:

- A general description of the criminal activity reported;
- The date and time the alleged crime was committed;
- The general location where the alleged crime was committed;
- The identity of the investigating officer or other point of contact; and
- A description of any injuries suffered or property damaged or stolen.

This is undoubtedly the type of information most frequently requested from law-enforcement agencies, not only by the news media but also by interested citizens. As defined in FOIA, this is minimal information about an event, frequently much less than an agency would typically disclose. Note, for example, that suspect descriptions, which are commonly made public in such cases as robbery, are not required components of "criminal incident information." Here are the required components:

"A general description of the criminal activity reported": This means the nature of the offense, though the specific criminal charge that may be involved need not be specified. For example:

> "Sexual assault" may be used rather than the more specific terms of rape, sodomy, sexual battery, and similar offenses.
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> "Malicious wounding" may be used instead of stabbing or beating.
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> "Drug law violation" can be used without specifying the substance involved or whether the case involves possession or distribution.

"The date and time the alleged crime was committed/the general location where the alleged crime was committed": A specific date should generally be provided, although in some cases a time frame may be appropriate. Street and hundred block is one of the most frequently used methods of identifying location. However, if a street or block contains only a small number of residences or buildings, use of a geographic, community, or subdivision locator to identify the location may be appropriate if needed to protect the identity of a victim or witness.

"Identity of the investigating officer or other point of contact": This can include an officer taking an initial report, a detective assigned to follow up on a case, or a public records/public information officer.

"A general description of any injuries suffered or property damaged or stolen": Phrases such as "stab wound," "life-threatening injuries," or "injuries that are not life threatening" are appropriate. Property may be described in such terms as "construction materials," "household goods," "assorted merchandise," or "cash" instead of books, chairs, desks, computers, or a specific amount of money.

NOTE: A **verbal response** as agreed to by the requester and the public body is sufficient to satisfy the requirement to provide criminal incident information.

NOTE: Prior to the 2022 amendments, criminal incident information and criminal investigative files both could be withheld under certain circumstances [see subsection C of

former § 2.2-3706.1 (2021)]. Prior to the 2021 amendments, criminal incident information could be withheld under a different set of circumstances [see subdivision A 1 of former § 2.2-3706 (2020)]. As amended effective July 1, 2022, however, there are no longer such exceptions that apply to criminal incident information. The exceptions from subsection C of former § 2.2-3706.1 (2021) have been recodified in subsection E of § 2.2-3706.1 (in 2022) such that they still allow criminal investigative files to be withheld when the listed circumstances apply, but they no longer apply to criminal incident information; see Part IV below.

5**. Criminal investigative files in cases that are NOT ONGOING when requested by certain persons (the victim or victim's family, or certain attorneys or persons involved in certain legal proceedings).** See Part IV below for details.

PART II—DISCRETIONARY EXEMPTIONS FROM RELEASE

(Subsection B of § 2.2-3706 and subsections C through G of § 2.2-3706.1)

The following records are excluded from the mandatory disclosure provisions of FOIA, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. **Criminal investigative files in cases that are ONGOING.** Criminal investigative files in ongoing matters may be withheld in the discretion of the custodian unless disclosure is prohibited by other law. See Part IV below for details.

2. **Criminal investigative files in cases that are NOT ONGOING** when requested by persons other than the victim or victim's family or certain attorneys or persons involved in certain legal proceedings. However, there are numerous additional procedural requirements that apply in different circumstances. See Part IV below for details.

3. **Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2, and (iii) campus police departments** of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;

4. Records of local law-enforcement agencies relating to **neighborhood watch programs** that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

5. **All records of persons imprisoned in penal institutions** in the Commonwealth, provided such records relate to the imprisonment;

6. Records of law-enforcement agencies, to the extent that such records contain **specific tactical plans**, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

7. All records of adult persons under (i) investigation or supervision by a **local pretrial services agency** in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a **local community-based probation services agency** in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by **state probation and parole services** in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

8. Records of a law-enforcement agency to the extent that they disclose the **telephone numbers for cellular telephones, pagers, or comparable portable communication devices** provided to its personnel for use in the performance of their official duties;

9. Those portions of any records containing information related to **undercover operations or protective details** that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. However, information concerning the overall costs or expenses associated with undercover operations or protective details must be released;

10. Records of (i) **background investigations of applicants** for law-enforcement agency employment, (ii) **administrative investigations** relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

11. **The identity of any victim, witness, or undercover officer, or investigative techniques or procedures.** However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § 19.2-11.2[6]; and

12. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913.

PART III—PROHIBITED RELEASES

(Subsection C of § 2.2-3706)

FOIA specifically **PROHIBITS** the disclosure of the identity of any individual providing information about a crime or criminal activity under a promise of anonymity.

Effective July 1, 2026, this subsection also prohibits the release of any record that has been **expunged** pursuant to § 19.2-392.2, unless dissemination is authorized pursuant to § 19.2-392.3 or 19.2-392.3:1; and any record that has been **sealed** pursuant to § 19.2-392.6:1, 19.2-392.7, 19.2-392.8, 19.2-392.10, 19.2-392.11, 19.2-392.12, 19.2-392.12:1, or 19.2-392.17, unless dissemination is authorized pursuant to § 19.2-392.13 and the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134. Note that these prohibitions are just one component of the amendments to the laws concerning expungement and sealing of criminal records, the majority of which fall outside of FOIA and the purview of this office. In addition to the amendments to the laws concerning expungement and sealing, there are also numerous enactment clauses directing actions by various state agencies in the implementation, administration, and study of these changes; for details, please see 2025 Acts of Assembly, cc. 634 and 671.

[6] § 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

PART IV—CRIMINAL INVESTIGATIVE FILES

(Subdivision B 1 of § 2.2-3706 and subsections A and C through G of § 2.2-3706.1)

Definitions of "criminal investigative file"

The phrase "criminal investigative file" is defined in two different places within FOIA. Subdivision B 1 of § 2.2-3706 defines "criminal investigative files" as follows:

> …any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence, relating to a criminal investigation or prosecution not required to be disclosed in accordance with § 2.2-3706.1.

Note that the last phrase of this definition refers to disclosure of criminal investigative files that are not ongoing to certain individuals as required under subsection D of § 2.2-3706.1. Therefore, when subsection D of § 2.2-3706.1 requires disclosure, then the exemption set out in subdivision B 1 of § 2.2-3706 does not apply under this definition. Otherwise, subdivision B 1 of § 2.2-3706 provides a discretionary exemption for criminal investigative files in all other situations.

The second definition of "criminal investigative files" is found in subsection A of § 2.2-3706.1. It is substantively similar but slightly different in that it draws a distinction between "criminal investigative files" and "criminal incident information" and does not refer to mandatory disclosure:

> "Criminal investigative files" means any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence, relating to a criminal investigation or prosecution, other than criminal incident information subject to disclosure in accordance with subsection B.

Note that this definition in subsection A is applicable to all of the subsections of § 2.2-3706.1 but not to § 2.2-3706.

Discretionary exemptions for criminal investigative files

As of July 1, 2022, criminal investigative files are generally exempt from mandatory disclosure in most situations but must be disclosed to certain individuals if the investigation is no longer ongoing. However, even when an investigation is not ongoing, there are conditions that allow the records to be withheld if release would cause certain types of jeopardy. In addition, certain portions of criminal investigative files (such as those that identify victims) may be redacted and before release occurs, the victim or the victim's family may have to be notified and given an opportunity to file an injunction against release. Therefore, the first question when dealing with a request for criminal investigative files must be whether or not the matter is ongoing. The term "ongoing" is defined in subsection A of § 2.2-3706.1 as follows:

> "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.

If the matter is ongoing under this definition, then the custodian may use the exemptions in subdivision B 1 of § 2.2-3706 or subsection C of § 2.2-3706.1 to withhold the criminal investigative files, or the custodian may release them in his discretion, except where disclosure is prohibited by law.

If the matter is not ongoing, then the criminal investigative file may also be withheld from mandatory release generally but must be released to certain individuals pursuant to subsection D of § 2.2-3706.1. That subsection provides in part that "criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except as provided in subsection E." Subsection E of § 2.2-3706.1 states that subsections C and D of § 2.2-3706.1 do not apply if release of the information:

> 1. Would interfere with a particular ongoing criminal investigation or proceeding in a particularly identifiable manner;
>
> 2. Would deprive a person of a right to a fair trial or an impartial adjudication;

3. Would constitute an unwarranted invasion of personal privacy;

4. Would disclose (i) the identity of a confidential source or (ii) in the case of a record compiled by a law-enforcement agency in the course of a criminal investigation, information furnished only by a confidential source;

5. Would disclose law-enforcement investigative techniques and procedures, if such disclosure could reasonably be expected to risk circumvention of the law; or

6. Would endanger the life or physical safety of any individual.

Subsection E concludes by noting that it may not be construed to authorize withholding information that is not likely to cause one of these effects. Therefore, if release of a portion of a criminal investigative file would cause one of the events listed in subsection E to occur, then the provisions of subsections C and D of § 2.2-3706.1 do not apply to that portion of the criminal investigative file. In that case, subdivision B 1 of § 2.2-3706 still applies to that portion of the criminal investigative file, so it may be withheld. Note that because subdivision B 1 of § 2.2-3706 is a discretionary exemption, the custodian may still choose to release such portions of criminal investigative files. However, given the jeopardy that would be caused by release, it is expected that such information will be withheld in most situations where subsection E applies.

As stated above, when deciding whether to release criminal investigative files, the first question to determine is whether the matter is ongoing. If the matter is ongoing, then the criminal investigative files may be withheld pursuant to the discretionary exemptions at subdivision B 1 of § 2.2-3706 and subsection C of § 2.2-3706.1. In that instance, the second question for the custodian to decide is whether to invoke the exemption and withhold the records or to release the records (or portions of the records) in his discretion.

If the matter is not ongoing, then two questions must follow: (1) whether the requester is one of the persons entitled to mandatory release (see below) in subsection D and (2) whether release would cause one of the six effects in subsection E listed above. If the answer to the second question is "yes," then those portions of the criminal investigative file may be withheld in order to avoid those effects.

Mandatory release of criminal investigative files that are not ongoing

Subsection D of § 2.2-3706.1 also provides that when a criminal investigation is no longer ongoing, certain individuals must be given access to the criminal investigative file except as described in subsection E (addressed above). Specifically, subsection D provides that the criminal investigative file shall be disclosed, by request, to the following persons regardless of whether any such person is a citizen of the Commonwealth:

1. The victim;

2. 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 proceeding;

3. The parent or guardian of the victim, 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;

4. An attorney representing a petitioner in a petition for a writ of habeas corpus or writ of actual innocence pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2 or any other federal or state post-conviction proceeding or pardon; and

5. For the sole purpose of inspection at the location where such records are maintained by the public body that is the custodian of the records:

(i) An attorney or his agent when such attorney is considering representing a petitioner in a post-conviction proceeding or pardon;

(ii) An attorney who provides a sworn declaration that the attorney has been retained by an individual for purposes of pursuing a civil or criminal action and has a good faith basis to believe that the records being requested are material to such action; or

(iii) A person who is proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2 or any other federal or state post-conviction proceeding

or pardon, who provides a sworn affidavit that the records being requested are material to such action.

Subsection D requires that a court review the affidavit before release to a *pro se* requester under clause (5) (iii), and also places further restrictions on what an attorney or *pro se* requester who accesses criminal investigative files under clauses (4) and (5) can do with the criminal investigative files as follows:

> An attorney or his agent who is in receipt of criminal investigative files or has inspected criminal investigative files pursuant to subdivision 4 or 5 shall not release such criminal investigative files or any information contained therein except as necessary to provide adequate legal advice or representation to a person whom the attorney either represents or is considering representing in a post-conviction proceeding or pardon or represents in a civil or criminal action.
>
> An attorney who is in receipt of criminal investigative files pursuant to subdivision 4 shall return the criminal investigative files to the public body that is the custodian of such records within 90 days of a final determination of any writ of habeas corpus, writ of actual innocence, or other federal or state post-conviction proceeding or pardon or, if no petition for such writ or post-conviction proceeding or pardon was filed, within six months of the attorney's receipt of the records.
>
> No disclosure for the purpose of inspection pursuant to clause (iii) of subdivision 5 shall be made unless an appropriate circuit court has reviewed the affidavit provided and determined the records requested are material to the action being pursued. The court shall order the person not to disclose or otherwise release any information contained in a criminal investigative file except as necessary for the pending action and may include other conditions as appropriate.

<u>Notice to victims or their families and injunction</u>

A public body may choose in its discretion to release criminal investigative files to an attorney under clause (4) or (5) (i) of subsection D of § 2.2-3706.1 without taking any additional steps. However, subsection F of § 2.2-3706.1 requires that for any other release under subsection D, the public body must first make reasonable efforts to notify the following persons:

> (i) The victim;
>
> (ii) The victim's immediate family members, if the victim is deceased and the immediate family member to be notified is not a person of interest or a suspect in the criminal investigation or proceeding; or
>
> (iii) The victim's parent or guardian, if the victim is a minor and the parent or guardian to be notified is not a person of interest or a suspect in the criminal investigation or proceeding.

In those instances, the public body must wait at least 14 days before releasing the records in order to give the person(s) notified an opportunity to file an injunction against release unless such individual has waived the 14-day period or at the request of the victim's insurance company or attorney. "The period within which the public body shall respond to the underlying request pursuant to § 2.2-3704 shall be dtolled pending the notification process and any subsequent disposition by the court."

Conflict resolution - other exemptions & prohibitions still apply

Both § 2.2-3706 and § 2.2-3706.1 have conflict resolution provisions, but they are worded quite differently. Subsection F of § 2.2-3706 provides that "[i]n the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control." This language applies the conflict resolution to all of the subsections of § 2.2-3706 (i.e., subsections addressing mandatory release, discretionary release, prohibited release, noncriminal incident records, and 911 calls), meaning that if they are in conflict with another provision of law, they are controlling. By contrast, subsection I of § 2.2-3706.1 states that "[i]n the event of a conflict between this section as it relates to requests made under this section and other provisions of law, the other provisions of law, including court sealing orders, that restrict disclosure of criminal

investigative files shall control." This language means that when some other law restricts the disclosure of criminal investigative files in conflict with the release of such files under § 2.2-3706.1, the more restrictive provision of law controls. Release of criminal investigative files under § 2.2-3706.1 occurs either when the records are exempt and the custodian chooses to release them in his discretion or when release is required under subsection D as described above. In either situation, given the quoted conflict resolution language, if there is a prohibition or discretionary exemption that applies to some portion of a criminal investigative file and it is in conflict with release under § 2.2-3706.1, the more restrictive provision (i.e., prohibition or discretionary exemption) still applies.

Additional time to respond

Generally, subsection B of § 2.2-3704 requires that a public body must respond to a request for public records within five working days of receiving the request. Subdivision B 4 of § 2.2-3704 generally allows a public body to invoke up to seven additional work days to respond to a request if it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. However, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1 when it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period, subdivision B 4 of § 2.2-3704 allows a public body to invoke 60 work days to respond.

PART V—NONCRIMINAL INCIDENT RECORDS

Those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person [EXAMPLES: personal or financial identifying information recorded on lost property reports, personal information in a response to domestic disputes where no crime has occurred, personal or medical information in a report concerning someone injured by accident where no crime occurred, etc.]. Note that this exemption allows only portions of noncriminal records to be withheld; any portions of noncriminal records of law-enforcement agencies that are not exempt must be released.

NOTE: As of 2023, access to personnel records of persons employed by a public body engaged in emergency medical services or fire protection services, a law-enforcement agency, or an emergency 911 system or any other equivalent reporting system are governed by the provisions of subdivision B 9 of § 2.2-3706 (regarding background, internal affairs, and other administrative investigations) and subdivision 1 of § 2.2-3705.1 (the general personnel information exemption), as applicable.

PART VI—SPECIFIC TYPES OF RECORDS

1. **911 records:** Subsection E of § 2.2-3706 provides that records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system are subject to FOIA. As with other records, whether 911 recordings or transcripts must be released depends on the nature and contents of the records (i.e., whether they are criminal or noncriminal, and if criminal, whether the matter is ongoing). One distinction between 911 records and other call records is that 911 records generally include computer aided dispatch (CAD) information such as the time and duration of the call, the greeting from the 911 dispatcher, and other information that must be released in most instances. Note that subdivisions 6 and 7 of § 2.2-3705.2 protect certain subscriber information included in 911 databases that is not public already (for example, subscriber information for persons with unlisted phone numbers), but they do not exempt specific 911 call records.

2. **In-car videos:** Just as with 911 records, whether in-car videos must be released depends on the nature and contents of the video in question. For example, felony or misdemeanor traffic stops and the apprehension of criminal suspects are generally treated as part of criminal investigations (i.e., subject to all of the usual exemptions and mandatory release provisions) BUT routine traffic stops that do not involve criminal violations should be treated as noncriminal (i.e., the custodian may only withhold portions regarding personal, medical, or financial information to protect safety or privacy).

3. **Body-worn camera videos:** Just as with 911 records and in-car videos, whether body-worn camera videos must be released depends on the nature and contents of what is shown

on the video (criminal or noncriminal, etc.). However, one must be sensitive to the fact that body-worn cameras may often go into private spaces such as people's homes, whereas most in-car videos record matters that occur in public.

4. **Cell phone numbers:** Subdivision B 7 of § 2.2-3706 states that records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties may be withheld.

5. **Roster of vehicles:** Generally, a roster of vehicles must be released EXCEPT for the identity of undercover cars or cars used for protective details.

PART VII—OTHER EXEMPTIONS FOUND IN FOIA THAT IMPACT LAW ENFORCEMENT

FOIA contains several other specific exemptions likely to be applicable or of interest to law-enforcement agencies in addition to those enumerated in § 2.2-3706. Some of these other provisions can be found in §§ 2.2-3705.1, 2.2-3705.2, and 2.2-3705.5, and include the following, all of which are discretionary exemptions:

Subdivision 13 of § 2.2-3705.1:

Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

Subdivision 1 of § 2.2-3705.2:

Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

Subdivision 2 of § 2.2-3705.2:

Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

Subdivision 10 of § 2.2-3705.2:

Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.

Subdivision 14 of § 2.2-3705.2:

Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

a. Critical infrastructure information or the location or operation of security equipment and systems of any public building, structure, or information storage facility, including ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, or utility equipment and systems;

b. Vulnerability assessments, information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities, or security plans and

measures of an entity, facility, building structure, information technology system, or software program;

c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or

d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system.

The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § 2.2-3704.

Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, "critical infrastructure information" means the same as that term is defined in 6 U.S.C. § 671.

Subdivision 8 of § 2.2-3705.3:

The names and personal contact information of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints

relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

Subdivision 7 of § 2.2-3705.5: Information acquired (i) during a review of any child death conducted by the State Child Fatality Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by § 32.1-283.8; or (vi) during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to the extent that such information is made confidential by § 37.2-314.1; or (vii) during a review of any death conducted by a local or regional suicide fatality review team to the extent that such information is made confidential by § 32.1-283.9.

PART VIII—SPECIFIC PROHIBITIONS ON THE RELEASE OF RECORDS IN OTHER LAWS

Social security numbers (SSN's): Where collected by a tax official, social security numbers are treated as tax information that is exempt from FOIA (§ 58.1-3017). In other contexts where there is no other specific exemption for the type of record containing an SSN, the first five digits of an SSN are prohibited from release under the Protection of Social Security Numbers Act (§ 2.2-3815 et seq.).

Tax information: Tax returns and other information relating to the income or property of any person or business are generally prohibited from release except for real estate assessments, information relating to building permits, certain personal property assessments, and certain other records (§ 58.1-3).

Juvenile records: Law-enforcement records concerning juveniles are generally prohibited from release with certain exceptions (§ 16.1-301).

Scholastic records: Certain scholastic records, particularly student contract information, is prohibited from release (§§ 22.1-287, 22.1-287.1 and 23.1-405; 20 U.S.C. § 1232g).

Victims and witnesses: Victim and witness identity is exempt from disclosure under FOIA (subdivision B 10 of § 2.2-3706), and crime victim and certain witness information may also be prohibited from release (subsection G of § 2.2-3706.1 and § 19.2-11.2).

Other records: Certain records or reports submitted in confidence to the Department of State Police relating to an ongoing criminal investigation are prohibited from release (§ 52-8.3).

Criminal history: Criminal history record information for adults (§ 19.2-389) and juvenile criminal history record information (§ 19.2-389.1) is generally prohibited from release but with exceptions.

Automatic license plate recognition systems: As of July 1, 2025, automatic license plate reader system data and audit trail data are not subject to disclosure under FOIA; the subsection also provides further restrictions on other types of dissemination of such data (subsection F of § 2.2-5517).

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Original Source: Warren R. Carmichael, Director Emeritus of Public Information, Fairfax County, VA Police Department.