

Criminal and Other Law Enforcement Records

Virginia Freedom of Information Act

Virginia Freedom of Information Advisory Council

<http://foiacouncil.dls.virginia.gov/>

foiacouncil@dls.virginia.gov

(804) 698-1810

FOIA Requests Generally

- Introduction to Records & FOIA
 - FOIA policy - § 2.2-3700
 - Definition of “public record” - § 2.2-3701
- Requesting Records
 - Who and how? - § 2.2-3704 (A) and (B)
- Responding to Requests
 - Five-working days - § 2.2-3704 (B)
 - Five responses - § 2.2-3704 (B)
 - Charges - § 2.2-3704 (F), (H), and (I)

FOIA & Criminal Records

§ 2.2-3706

- Mandatory release - § 2.2-3706 (A)
- Discretionary release - § 2.2-3706 (B)
- Prohibitions - § 2.2-3706 (C)

Criminal Records – Mandatory Release

- * Criminal incident information - § 2.2-3706 (A)(1)
- * Mugshots - § 2.2-3706 (A)(2)
- * Adult arrestee identity, status of charge and arrest - § 2.2-3706 (A)(3)
- * Completed unattended death investigations - § 2.2-3706 (A)(4)

Criminal Records – Discretionary Release

- Criminal Investigative Files - § 2.2-3706 (B) (1)
- Records relating to imprisonment - § 2.2-3706 (B) (4)
- Specific tactical plans - § 2.2-3706 (B) (5)
- Cell phone numbers (agency-issued) - § 2.2-3706 (B) (7)
- Undercover operations and protective details - § 2.2-3706 (B) (8)
- Background investigations, allegations of wrongdoing (internal affairs) - § 2.2-3706 (B) (9)
- Identity of any victim, witness, or undercover officer, or investigative techniques or procedures - § 2.2-3706 (B) (10)

Criminal Records – Prohibited from Release

- * Identity of any person providing information about a crime or criminal activity under a promise of anonymity (confidential informants, Crime Stoppers) - § 2.2-3706 (C)

Noncriminal Records

§ 2.2-3706 (D)

- The rule - First responders (medical, fire, and law enforcement) and call centers must disclose noncriminal records
- Except may redact as follows:
 - Personal, medical, and financial information
 - To protect safety or privacy
 - Of any person

Other Records of Law Enforcements Agencies

- 911 Tapes - § 2.2-3706 (E) – subject to FOIA (contents/context/CAD)
- Dash and body camera videos – depends on what is shown
 - Dash cam video is usually in public place
 - Body cam video may be in public or private places
- Roster of vehicles – release, except do not have to ID undercover vehicles

Other FOIA Exemptions

- Exemptions applicable to all public bodies (personnel, contracts, attorney-client, procurement, etc.) - § 2.2-3705.1
- Public safety exemption - § 2.2-3705.2
 - Access to computer or phone system - § 2.2-3705.2 (2)
 - Statewide Agencies Radio System (STARS) - § 2.2-3705.2 (10)
 - Various types of information that would jeopardize safety or security if made public; homeland security notification requirement - § 2.2-3705.2 (14)
- “Feuding neighbors” exemption (§ 2.2-3705.3)

Prohibitions – Other Provisions Outside of FOIA

- Social Security Numbers - §§ 2.2-3815 and 2.2-3816
- Tax returns and related information § 58.1-3
- Juvenile arrest and court records - § 16.1-301
- Certain school records - § 22.1-287 et seq. (K-12), § 23.1-405 (higher ed), federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g)
- Crime victim information - § 19.2-11.2
- Certain records/reports submitted to Department of State Police relating to ongoing criminal investigation - § 52-8.3
- Criminal history record information/juvenile record information - §§ 19.2-389 and 19.2-389.1