

Attachment 7 to March 9 Docket Memo

Summary of FOIA Requirements for Police Related Documents

The Code of Virginia § 2.2-3706 outlines which law enforcement records and information are required to be released, which records are prohibited from release, and which records the City has discretion to release or withhold either in whole or in part. Below are types of records that fall within each broad category:

Mandatory Release

1. ***Criminal incident information relating to felony offenses***, including (i) a general description of the criminal activity reported, (ii) the date the alleged crime was committed, (iii) the general location where the alleged crime was committed, (iv) the identity of the investigating officer or other point of contact, and (v) a general description of any injuries suffered or property damaged or stolen. (§ 2.2-3706(A)(1))
2. ***Adult arrestee photographs (mugshots)*** 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 (§ 2.2-3706(A)(2));
3. 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. (§ 2.2-3706(A)(3)) This includes felony, misdemeanor, and traffic arrests; and
4. 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 (§ 2.2-3706(A)(4));

Prohibited Release

1. The ***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)).
2. ***Juvenile arrest and court records*** (§ 16.1-301)
3. ***Crime victim information*** (§ 19.2-11.2)
4. Certain records/reports submitted to ***Department of State Police relating to ongoing criminal investigation*** (§ 52-8.3)
5. ***Criminal history*** record information/***juvenile record*** information (§§ 19.2-389 and 19.2-389.1)

Discretionary Release

Criminal Records

1. ***Criminal investigative files*** (e.g., 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)" (§ 2.2-3706(B)(1));
2. ***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.), 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 (§ 2.2-3706(B)(2));
3. ***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 (§ 2.2-3706(B)(3));
4. ***All records of persons imprisoned in penal institutions*** in the Commonwealth, provided such records relate to the imprisonment (§ 2.2-3706(B)(4));
5. 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*** (§ 2.2-3706(B)(5));
6. 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 (§ 2.2-3706(B)(6));
7. 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*** (§ 2.2-3706(B)(7));
8. 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 (§ 2.2-3706(B)(8));
9. 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 (§ 2.2-3706(B)(9));
10. 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 § 19.2-11.21 (§ 2.2-3706(B)(10)); and
11. ***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 (§ 2.2-3706(B)(11)).

Noncriminal Records

- First responders (medical, fire, and law enforcement) and call centers must disclose noncriminal records. However, 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 (§ 2.2-3706(D)). [EXAMPLES: credit card numbers and other identifying information recorded on lost property reports, and response to domestic disputes where no violence occurs.]
- If a record contains both exempt and nonexempt material, the record will be disclosed but any exempt identifying information will be redacted.