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HOUSE BILL NO. 2043

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 2.2-3705.8 and 2.2-3706 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6, relating to public release of identifying information of a law-enforcement officer during and following an official investigation; penalty.*

Patrons—Miller and Collins

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.8 and 2.2-3706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6 as follows:

§ 2.2-3705.8. Limitation on record exclusions.

A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.

The provisions of this subsection, however, shall not require public access to (i) records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less or (ii) information prohibited from disclosure pursuant to § 18.2-60.6.

B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 2.2-3706. Disclosure of criminal records; limitations.

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

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

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision a.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

b. 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; and

c. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest;

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

a. Criminal investigative files, defined as any documents and information, including complaints, court

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59 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and
60 evidence relating to a criminal investigation or prosecution, other than criminal incident information
61 subject to release in accordance with subdivision 1 a;

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

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

69 d. All records of persons imprisoned in penal institutions in the Commonwealth provided such
70 records relate to the imprisonment;

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

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

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

83 h. Those portions of any records containing information related to undercover operations or
84 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
85 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
86 concerning the overall costs or expenses associated with undercover operations or protective details;

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

91 j. The identity of any victim, witness, or undercover officer, or investigative techniques or
92 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited
93 or restricted under § 19.2-11.2; and

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

98 3. Prohibited releases. The identity of any individual providing information about a crime or criminal
99 activity under a promise of anonymity shall not be disclosed.

100 B. Noncriminal records. Those portions of noncriminal incident or other noncriminal investigative
101 reports or materials that contain identifying information of a personal, medical, or financial nature may
102 be withheld where the release of such information would jeopardize the safety or privacy of any person.
103 Access to personnel records of persons employed by a law-enforcement agency shall be governed by the
104 provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable, and §
105 18.2-60.6.

106 C. Records of any call for service or other communication to an emergency 911 system or
107 communicated with any other equivalent reporting system shall be subject to the provisions of this
108 chapter.

109 D. Conflict resolution. In the event of conflict between this section as it relates to requests made
110 under this section and other provisions of law, this section shall control.

111 **§ 18.2-60.6. Public release of identifying information of a law-enforcement officer during and**
112 **following official investigation; penalty.**

113 A. For purposes of this section:

114 "Family or household member" means the same as that term is defined in § 16.1-228.

115 "Law-enforcement officer" means the same as that term is defined in § 18.2-186.4:1.

116 "Official investigation" means a criminal or internal investigation conducted by a law-enforcement
117 agency of the Commonwealth or a political subdivision thereof.

118 B. Prior to the conclusion of an official investigation that involves the discharge of a firearm or use
119 of force by a law-enforcement officer during the performance of such law-enforcement officer's official
120 duties and prior to the conclusion of such investigation, no public official, public employee, or person

121 acting on behalf of a public official or public employee shall release to the public such law-enforcement
122 officer's name or any information that could reasonably be used to identify him, provided that such
123 official investigation is concluded within six months. If such official investigation is not concluded within
124 six months, such law-enforcement officer's name shall be released to the public.

125 C. After the conclusion of such official investigation, a public official, public employee, or person
126 acting on behalf of a public official or public employee shall release to the public the law-enforcement
127 officer's name if the law-enforcement officer is charged with a criminal offense as a result of such
128 official investigation. If the law-enforcement officer is not charged with a criminal offense as a result of
129 such official investigation, the law-enforcement officer's name may be released to the public.

130 D. Notwithstanding the provisions of this section, if a law-enforcement officer that was the subject of
131 such official investigation has not been charged with a criminal offense as a result of the official
132 investigation, the law-enforcement officer's name may be withheld from release if the information can
133 reasonably be expected to create a risk of harm to the law-enforcement officer or a family or household
134 member of the law-enforcement officer.

135 E. A violation of this section is a Class 1 misdemeanor.