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SENATE BILL NO. 1102

Offered January 11, 2017

Prefiled January 7, 2017

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of Information Act; completed unattended death investigations; mandatory disclosure.

Patron—Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3706 of the Code of Virginia is amended and reenacted as follows:

§ 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; and

d. Records of completed unattended death investigations to the most immediate family member of the victim, provided that the family or household members of the victim have been ruled out as suspects.

For the purposes of this subsection d, "immediate family" means the decedents 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 "family or household member" means the same definition as set forth in § 16.1-228.

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 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 release in accordance with subdivision 1 a;

b. 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;

c. 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;

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

e. 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

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59 the general public;

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

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

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

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

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

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

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

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

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

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