VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[S 1102]

Approved

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 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. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "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. 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 the general public;

f. 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;

g. 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;

h. 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. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;

i. 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;

j. 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; and

k. 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; and

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

B. Noncriminal 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. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable.

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

D. Conflict resolution. In 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.