

20200992D

HOUSE BILL NO. 5090

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on August 24, 2020)

(Patron Prior to Substitute—Delegate Hurst)

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files.

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 law-enforcement and criminal records; limitations.

A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested in accordance with the provisions of this chapter, except that the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted pursuant to § 19.2-11.2:

1. Criminal incident information relating to felony offenses contained in any report, notes, electronic communication, or other document, including filings through the incident-based reporting system, which shall include:

- a. A general description of the criminal activity reported;
- b. The date and time the alleged crime was committed;
- c. The general location where the alleged crime was committed;
- d. The identity of the investigating officer or other point of contact;
- e. A general description of any injuries suffered or property damaged or stolen; and
- f. Any diagrams related to the alleged crime or the location where the alleged crime was committed.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision 1.

Where However, where a court of record determines upon the petition of a law-enforcement agency or attorney for the Commonwealth that 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, disclose any information prohibited from release in subsection C, 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 1 shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage. An investigation shall not be considered "ongoing" for purposes of this subsection if three or more years have elapsed from when the prosecution was finally adjudicated or a decision to take no action was made;

2. 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;

3. Information, including race, ethnicity, and gender, 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

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. 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; and

5. Criminal investigative files relating to a case in which (i) criminal charges have been finally adjudicated or (ii) more than three years have elapsed from the time a decision to take no action was made.

For purposes of this subdivision:

"Criminal investigative files" means any documents and information, including complaints, court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, correspondence, reports, witness statements, or evidence.

Nothing in this subdivision shall prohibit the disclosure of current anonymized, aggregate location and demographic data collected pursuant to § 52-30.2 or similar data documenting law-enforcement officer encounters with members of the public.

B. 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

60 disclosure is prohibited by law:

61 1. ~~Criminal~~ Any criminal investigative files, defined as any documents and information, including
62 complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports,
63 witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal
64 incident information subject to release not required to be disclosed in accordance with subdivision
65 subdivisions A 1 and 5;

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

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

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

75 5. Records of law-enforcement agencies, to the extent that such records contain specific tactical
76 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
77 the general public;

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

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

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

91 9. Records of (i) background investigations of applicants for law-enforcement agency employment,
92 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
93 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
94 agencies that are made confidential by law;

95 10. The identity of any victim, witness, or undercover officer, or investigative techniques or
96 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited
97 or restricted under § 19.2-11.2; and

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

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

104 D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire
105 protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing
106 calls for service or other communications to an emergency 911 system or any other equivalent reporting
107 system may withhold those portions of noncriminal incident or other noncriminal investigative reports or
108 materials that contain identifying information of a personal, medical, or financial nature where the
109 release of such information would jeopardize the safety or privacy of any person. Access to personnel
110 records of persons employed by a law-enforcement agency shall be governed by the provisions of
111 subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.

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

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