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HOUSE BILL NO. 2196

Offered January 13, 2021

Prefiled January 13, 2021

A *BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of Information Act; required release of law-enforcement disciplinary records; exceptions.*

Patrons—Mullin, Hurst and Roem

Referred to Committee on General Laws

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 when requested in accordance with the provisions of this chapter:

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

- a. A general description of the criminal activity reported;
- b. The date 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; and
- e. 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 *this* subdivision 1.

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 *this* 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;

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 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. *Notwithstanding any other provisions of law to the contrary, law-enforcement disciplinary records related to completed disciplinary investigations, provided that the following information shall be redacted from such records:*

a. The home, work, or school address or home or work telephone number of any law-enforcement officer, law-enforcement officer's family member, complainant, complainant's family member, witness, or witness's family member;

b. Any social security numbers; and

c. Any medical information concerning the law-enforcement officer or the complainant. However, this subdivision c shall not be construed to prohibit the release of any description of injuries or other conditions that are the subject of the complaint and were caused by or otherwise resulted from the law-enforcement officer's alleged conduct.

As used in this subdivision 5, "law-enforcement disciplinary records" means any record created in furtherance of a law-enforcement disciplinary proceeding pursuant to § 9.1-600 or any other administrative or judicial proceeding, whether such proceeding takes place in the Commonwealth or in another jurisdiction. Such records include (i) the complaint, allegation, or charge made against the law-enforcement officer; (ii) the name of the law-enforcement officer; (iii) the transcript of any disciplinary hearing or administrative or judicial hearing and any exhibits introduced at such hearing; (iv) the disposition of any disciplinary proceeding or administrative or judicial proceeding; (v) the final

INTRODUCED

HB2196

59 *written opinion or memorandum supporting the disposition of any disciplinary proceeding or*
60 *administrative or judicial proceeding, including any findings of fact and analysis of the officer's*
61 *conduct; and (vi) any video or audio recordings related to the complaint, allegation, or charge created*
62 *by a body-worn camera, mobile video recorder, or other similar recording device.*

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

66 1. Criminal investigative files, defined as any documents and information, including complaints, court
67 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and
68 evidence relating to a criminal investigation or prosecution, other than criminal incident information
69 subject to release in accordance with subdivision A 1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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