

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** HB734

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Robert B. Bell

**3. Committee:** General Laws and Technology

**4. Title:** Virginia Freedom of Information Act; disclosure of certain criminal records.

**5. Summary:** Provides that criminal investigative files relating to an ongoing criminal investigation or proceeding are excluded from the mandatory disclosure provisions, but may be disclosed by the custodian in his discretion except as provided in subsection E of § 2.2-3706.1 or where such disclosure is prohibited by law. Criminal investigative files related to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian in his discretion except as provided in subsection E of § 2.2-3706.1. Records shall be disclosed by request to (i) the victim, (ii) members of the victim's immediate family, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation or proceeding, (iii) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest, or (iv) an attorney representing a petitioner in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding; and (v) for the sole purpose of inspection at the location where such records are maintained by the public body that is the custodian of the records, an attorney who provides a sworn declaration that the attorney has been retained by an individual for purposes of pursuing a civil or criminal action and has a good faith basis to believe that the records being requested are material to such action.

Provides that no criminal investigative file or portion thereof shall be disclosed to any requester except (i) the victim, (ii) members of the victim's immediate family, if the victim is deceased, and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation or proceeding, (iii) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest, or (iv) an attorney representing a petitioner in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information. Upon notification of a request, such persons may file a petition in an appropriate court for an injunction to prevent disclosure of the records. The bill requires the court to consider certain information in making its determination and provides that a public body shall be prohibited from disclosing criminal investigative if the court awards an injunction. The public body shall not release information for 14 days after notification of the request to allow for a petition for injunction to be filed. If the public body receives

notification of a petition within the 14 day period, they shall not release information until after the resulting disposition by the court.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** No Impact.

**8. Fiscal Implications:** This bill is not expected to create a fiscal impact to state agencies. According to the Office of the Executive Secretary of the Supreme Court, the proposed bill is not expected to have a material fiscal impact on the operations of the court system.

**9. Specific Agency or Political Subdivisions Affected:** All state agencies and other public bodies covered by the Virginia Freedom of Information Act.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:**

Date: 3/4/2022