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SENATE BILL NO. 727

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 8, 2016)

(Patrons Prior to Substitute—Senators McDougle and Stuart [SB 676])

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of Information Act; public access to noncriminal records.

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;

2. Discretionary releases. The following records are excluded from the 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 Chapter 17 (§ 23-232 et seq.) of Title 23;

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

60 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
61 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
62 concerning the overall costs or expenses associated with undercover operations or protective details;

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

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

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

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

76 B. Noncriminal records. ~~Records (i) required to be maintained by law-enforcement agencies pursuant~~
77 ~~to § 15.2-1722 or (ii) maintained by other public bodies engaged in criminal law-enforcement activities~~
78 ~~shall be subject to the provisions of this chapter except that those~~ *Those* portions of noncriminal incident
79 or other noncriminal investigative reports or materials that contain identifying information of a personal,
80 medical, or financial nature may be withheld where the release of such information would jeopardize the
81 safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement
82 agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of
83 § 2.2-3705.1, as applicable.

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

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