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HOUSE BILL NO. 493

Offered January 12, 2022

Prefiled January 11, 2022

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.

Patron—Mullin

Referred to Committee on Public Safety

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. 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;

2. 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

3. 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

4. Notwithstanding any other provision 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;

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;

d. Identifying information of a personal, medical, or financial nature where the release of such information would jeopardize the safety or privacy of any person; and

e. Any technical infractions of a law-enforcement officer. As used in this subdivision e, "technical infraction" means a minor rule violation by a law-enforcement officer solely related to the enforcement of administrative or departmental rules of the law-enforcement agency that employs such officer that (i) does not involve an interaction with members of the public; (ii) does not involve deception, misrepresentation, dishonesty, or intemperate behavior by the law-enforcement officer; and (iii) is not otherwise connected to the law-enforcement officer's investigative, enforcement, training, supervision, or reporting responsibilities. "Technical infraction" does not include an instance where a firearm is discharged.

As used in this subdivision 4, "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 arising from the law-enforcement officer's conduct; (v) the final written opinion or memorandum supporting the disposition of any disciplinary proceeding or administrative or judicial proceeding, including any findings of fact and analysis of the officer's conduct; and (vi) any video or audio recordings related to the complaint, allegation, or charge created by a body-worn camera, mobile video recorder, or other

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59 *similar recording device.*

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

63 1. Criminal investigative files, defined as any documents and information, including complaints, court  
64 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and  
65 evidence, relating to a criminal investigation or prosecution not required to be disclosed in accordance  
66 with § 2.2-3706.1;

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

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

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

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

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

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

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

92 9. Records, *other than those required to be disclosed pursuant to subdivision A 4*, of (i) background  
93 investigations of applicants for law-enforcement agency employment, (ii) administrative investigations  
94 relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other  
95 administrative investigations conducted by law-enforcement agencies that are made confidential by law;

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

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

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

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

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

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