

Freedom of Information Act (FOIA) Rights and Responsibilities

Where to Send A FOIA Request or Questions Regarding FOIA:

Ashland Police Department
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The Ashland Police Department maintains records that deal with day-to-day operations. Those day-to-day records include, but are not limited to:

- 1) FR-300 (accident reports for those involved or financially interested parties);
- 2) Traffic Citations;
- 3) Certain Incident Reports;
- 4) Limited Information Regarding Criminal Arrests.

The Rights of Those Requesting Information

Any individual can request information. A request for records can be made by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.

Costs Associated With a FOIA Request

Any citizen has the right to request an estimate of cost for processing the request.

Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if

not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

The Responsibilities of the Ashland Police Department

The Ashland Police Department complies with the state code regarding requests for information as required by law under Virginia State Code 2.2-3704. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth the inspection shall occur during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping

The Ashland Police Department will provide the information within five business days as required by code. The five days begin the day after the document is received. If unable to provide the information the Ashland Police Department can request a seven-day extension and provide the reason for the needed additional time. In the case of a request for criminal investigative files pursuant to Code of Virginia 2.2-3706.1 when not practically possible to provide the requested records or to determine whether they are available within the five-day-work period, subdivision B 4 of 2.2-3704 allows a public body to invoke 60 work days to respond.

The Ashland Police Department will respond with one of the following responses within five business days:

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold

the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

If you make a request for a very large number of records, and the Ashland Police Department feels that it cannot provide the records to you within 12 days without disrupting other organizational responsibilities, the Ashland Police Department may petition the court for additional time to respond to your request. However, FOIA requires that the Ashland Police Department make a reasonable effort to reach an agreement with you concerning the production of the records before it goes to court to ask for more time.

Exceptions to FOIA Requests

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Ashland Police Department commonly withholds records subject to the following exemptions:

1. Requests by persons incarcerated in a state, local or federal correctional facility (§ 2.2-3703(C)).
2. Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia).
3. Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3)).
4. Tests or examinations used, administered or prepared for purposes of evaluation of any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or qualifications for any license or certificate (§ 2.2-3705.1 (4)).
5. Vendor proprietary information (§ 2.2-3705.1 (6)).
6. Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12)).
7. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person (§ 2.2-3705.2 (4)).
8. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information (§ 2.2-3706 (A) (2) (a)).
9. The Federal Freedom of Information Act only applies to federal agencies and not to the Department or other state agencies.

The following frequently requested records are governed by the following statutes:

1. Active criminal investigations are governed by the restrictions set forth under § 52-8.3.
2. Criminal history records are governed by the restrictions set forth under § 19.2-389.
3. Accident reports and information regarding accidents are governed by § 46.2-379 and § 46.2-380. FR300/Accident Reports may be obtained through the Virginia Department of Motor Vehicles. Parties involved in the case or those who are financially involved may access accident reports on www.crashdocs.org.

4. Criminal intelligence files, Title 28 Code of Federal Regulations, Part 23.
5. Juvenile records § 16.1-301.

The following deals with specifically with Criminal Incident Information as required by state code VA 2.2-3706:

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. Ongoing 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. If the matter is no longer ongoing, criminal investigative files generally must be released, although there are exceptions that allow certain portions to continue to be withheld, including if release:

1. Would interfere with a particular ongoing criminal investigation or proceeding in a particularly identifiable manner;
2. Would deprive a person of a right to a fair trial or an impartial adjudication;
3. Would constitute an unwarranted invasion of personal privacy;
4. Would disclose (i) the identity of a confidential source or (ii) in the case of a record compiled by a law enforcement agency in the course of a criminal investigation, information furnished only by a confidential source;
5. Would disclose law enforcement investigative techniques and procedures, if such disclosure could reasonably be expected to risk circumvention of the law; or
6. Would endanger the life or physical safety of any individual.

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

i. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations

relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

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

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

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

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

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

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