



BRUNSWICK COUNTY SHERIFF'S OFFICE

Freedom of Information Act Guidelines

The Virginia Freedom of Information Act (FOIA), as defined in the Virginia State Code Section 2.2-3700, ensures the citizens of the Commonwealth and representatives of the media ready access to public records in the custody of public bodies, public officials, and public employees. FOIA was enacted to promote an increased awareness by all persons of governmental activities.

A public record, as defined in Virginia State Code Section 2.2-3701, is any writing or recording that consists of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may be withheld only if a specific statutory exemption applies.

YOUR FOIA RIGHTS

1. You have the right to request to inspect or receive copies of public records, or both.
2. You have the right to request that any charges for the requested records be estimated in advance.
3. If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel the compliance with FOIA. Alternatively, you may contact the FOIA Council for a non-binding advisory opinion at 1-866-448-4100.

MAKING A REQUEST FOR RECORDS FROM THE BRUNSWICK COUNTY SHERIFF'S OFFICE

1. The FOIA Administrator is Tammy W. Newcomb, Assistant to the Sheriff. She may be reached at 434-848-3133 or newcomb@brunswickso.org.
2. You may make a FOIA request by U.S. Mail, fax, email, 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.
3. Submit requests to the Office of the Brunswick County Sheriff, 120 E. Hicks Street, Lawrenceville, VA 23868. Your request must identify the records that you are seeking with "reasonable specificity".

4. Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy records. It does not apply to a situation where you are asking general questions about the work of the Brunswick County Sheriff's Office.
5. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying the records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying the records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.
6. Individuals requesting copies of any documents can be charged twenty-five (\$0.25) cents per page for such copies. You may request to receive the documents electronically in a format used by the Sheriff's Office in the regular course of business.
7. Persons making Freedom of Information Act document requests that require fifteen (15) minutes or less of staff time for a response shall not be charged for search time, but can be charged for any copies received.
8. Individuals making Freedom of Information Act document requests, which require more than fifteen (15) minutes of staff time for a response shall be charged at the hourly rate of the individual employee performing the search. These charges shall be calculated in fifteen (15) minute increments, in addition to charges made for copies and other expenses incurred by the Sheriff's Office as allowed by the Virginia Freedom of Information Act. In any case where the Sheriff's Office determines that the search and copying charges for producing the requested information are likely to exceed two hundred dollars (\$200.00), the Sheriff's Office may, before continuing to process the request, require the requestor to agree to payment of an amount not to exceed the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within 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.
9. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

10. Procedures for payment of the charges authorized by this policy shall be in accordance with the Virginia Freedom of Information Act.

Pursuant to Virginia Code Section 2.2-3706, certain documents and records are excluded from the Virginia Freedom of Information Act's disclosure provisions. Except where specifically prohibited by law, disclosure of the following records remains within the discretion of the Brunswick Sheriff's Office:

1. 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 §2.2-3706 A(1).
2. Reports submitted, in confidence, to the state or local law-enforcement agencies, to investigators authorized pursuant to Chapter 3.2 (§2.2-307 et. seq.) and to campus police departments or public institutions for higher education established pursuant to Article 3 (§23.1-809 et seq.) of Chapter 8 of Title 23.1.
3. Records of 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 departments under a promise of anonymity.
4. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication device provided to its personnel for use in the performance of their official duties.
5. 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 §19.2-111.2.
6. Prohibited releases. The identities of persons providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.
7. Records of a law-enforcement agency 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.
8. 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 overall costs or expenses associated with undercover operations or protective details.
9. Records of background investigations of applicants for law-enforcement agency employment, administrative investigations relating to allegations of wrongdoing by

employees of a law-enforcement agency, and other administrative investigations conducted by law-enforcement agencies that are made confidential by law.

Non-criminal records: Public bodies engaged in emergency medical services, fire protection services, criminal law-enforcement activities, or processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system may withhold those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature 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 B 9 of this section and subdivision 1 of §2.2-3705.1, as applicable.

Pursuant to Virginia Code Section 2-2-3706, the following information related to criminal investigations shall be disclosed:

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.
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 or interest or suspect. For the purposes of this subdivision, “unattended death” means a death determined to be 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 to intestate succession as set forth in Section 64.2-200.

2.2-3706.1. Disclosure of law-enforcement records; criminal incident information and certain investigative files; limitations.

A. For purposes of this section:

“Immediate family” means the decedent’s personal representative or, if no personal representative has qualified, the decedent’s next of kin in order to intestate succession as set forth in Section 64.2-200.

“Ongoing” refers to a case in which the prosecution has not been fully adjudicated, the investigation continues to gather evidence for a possible future criminal case, and such case would be jeopardized by the premature release of evidence.

- B. All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested in accordance with the provision of this chapter:
1. Criminal incident information relating to felony offenses contained in any report, notes, electronic communication, or other document, including filings through an incident-based reporting system, which shall include:
 - a. A general description of the criminal activity reported;
 - b. The date and time 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;
 - e. A general description of any injuries suffered or property damaged or stolen.
 - f. Any diagrams related to the alleged crime or the location where the alleged crime was committed, except that any diagrams described in subdivision 14 of § 2.2-3705.2 and information therein shall be excluded from mandatory disclosure, but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision 1; and

2. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, correspondence, reports, witness statements, or evidence, relating to a criminal investigation or proceeding that is not ongoing.
- C. The provisions of subsection B shall not apply if the release of such information:
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.

Nothing in this subsection shall be construed to authorize the withholding of those portions of such information that are unlikely to cause any effect listed herein.

- D. Nothing in this subsection shall prohibit the disclosure of current anonymized, aggregate location and demographic data collected pursuant to § 52-30.2 or similar data documenting law-enforcement officer encounters with members of the public.

No photographic, audio, video, or other record depicting a victim to be readily identified, except for transcripts of recorded interviews between a victim and law enforcement, shall be released pursuant to subdivision B2 to anyone except (i) the victim; (ii) members of the immediate family of the victim, if the victim is deceased; or (iii) the parent or guardian of the victim, if the victim is a minor.

E. In the event of a conflict between this section as it relates to requests made under this section and other provisions of law, the other provisions of law, including court sealing orders, that restrict disclosure of criminal investigative files, as defined in subsection B, shall control.

Pursuant to Virginia State Code, the following standards have been established regarding requests and responses. These standards include time limitations and methods of addressing these limitations.

2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to requests; charges; etc.

- A. Except as otherwise specifically provided by law, all public records shall be open 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 during the regular office hours of the custodian or such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. 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.
- B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:
 - 1. The requested records are being entirely withheld. 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. 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.

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 the five working days, the public body shall have an additional seven (7) working days or, in the case of a request for criminal investigative files pursuant to §2.2-3706.1, sixty (60) working days in which to provide one of the preceding responses.

The Freedom of Information Act does not provide for “standing requests”, as for all future “criminal incident information” reports that an agency may produce. FOIA can be applied only to records that already are in existence. No public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

Persons incarcerated in either a state or federal correctional facility cannot request records under FOIA, but do retain the right to call for records which may be used as evidence in criminal prosecution in which they are involved.

If you have any questions regarding these guidelines, you may contact the FOIA Administrator. In addition, the Virginia Freedom of Information Council is available to answer your FOIA questions. The Council may be contacted by email at foiacouncil@leg.state.va.us or by phone at 1-866-448-4100.