

	FREDERICKSBURG POLICE DEPARTMENT DIRECTIVES	
	ADMINISTRATION	
115.00	APPROVED: <i>Brian F. Layton, Chief of Police</i>	Initiated: 02/16/2021
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Virginia Freedom of Information Act (VFOIA)

115.01 - Virginia Freedom of Information Act

The Virginia Freedom of Information Act (VFOIA) provides citizens of the Commonwealth of Virginia, and the representatives of media that circulate or broadcast into the Commonwealth, the right to access public records in the custody of the Fredericksburg Police Department, or its officers and employees. FOIA exists to promote openness and public trust in the government.

This policy will discuss VFOIA as it pertains to the release of law enforcement records held by the Fredericksburg Police Department. The Fredericksburg Police Department FOIA officer will work closely with the City of Fredericksburg FOIA officer to ensure all requests are answered in a timely fashion. The City of Fredericksburg FOIA Records Request Response Guide can be used for an additional source of reference regarding FOIA.

115.02- Public Records Defined

A public record is any writing or recording, in any format, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. They may be in the form of handwritten notes, typewritten documents, electronic files, audio or video recordings, photographs, or any other written or recorded media. Draft documents are records and are subject to FOIA. The police department is not required to create a record that does not exist.

Records on a personal phone or computer that were prepared in the transaction of public business are public records and subject to FOIA.

115.03- Requests

Any request for Fredericksburg Police Department's records and documents is a FOIA request and must be processed in accordance with the Code of Virginia. To invoke the Department's compliance with FOIA, the requestor does not have to cite FOIA in their request, nor do they have to make the request in writing. Any request for the Department's public records and documents can be made via email (FOIA@pd.fredericksburgva.gov), in person, by phone, by mail, by fax, or in any other manner where a request can be made. The request can be made to any employee. The request should be received and referred to the FOIA officer immediately.

All FOIA requests will be processed in accordance with Va. Code 2.2-3700 through 2.2-3714, and the City of Fredericksburg Freedom of Information Act Records Request Response Guide.

FOIA requests are available to Virginia residents and the media that broadcast in Virginia. The name and legal address may be required before a response is provided. FOIA rules do not apply until the required information requested is provided.

The Fredericksburg Police Department may process out of state FOIA requests by following the same procedure. VFOIA procedural rules do not apply to out of state requests.

A response must be sent within five working days of receipt of a reasonably specific request. Day 1 is the first working day after receipt. The Fredericksburg Police Department will respond promptly to requests that are obviously public and easy to produce. If it is not possible to complete the request in five days, the Department will notify the requestor that they need an extension. An extension of 7 days is provided. For criminal investigative files, the Department has 60 days to produce those files as long as a response was provided initially during the five-day window.

Additional information about FOIA and how to make a request can be found on the police department webpage.

115.04– Procedure

All questions or concerns, as well as requests for records shall be referred to the FOIA officer or his/her designee. The FOIA officer will be responsible for tracking all requests, maintaining records of completed requests and ensuring that a proper response is sent within the time required.

The FOIA officer will review the request to determine several factors. The following steps will be followed in processing the request.

- 1) Is the request a FOIA request?

- 2) Is the requestor a citizen of Virginia or representative of the media that is authorized to make the request?
- 3) Is the request reasonably specific or is further clarification needed from the requestor?
- 4) The FOIA officer must confirm that the Fredericksburg Police Department is the custodian of the records and that a record exists. If they are determined not to be the custodian, then contact information, if known for the custodian should be provided to the requestor.
- 5) Do the records exist and the likely volume of the records to determine an estimate of time and expense that will be required to fulfill the request.
- 6) Calculate the due date
- 7) Prepare the Response
- 8) Send the response, close the request and keep the file.

The FOIA officer will request the records from persons in the agency that are able to provide the requested record with specific instructions and a due date.

115.05- Preparing the Response

The FOIA officer or his/her designee will prepare a response. The response will be sent via email where applicable. Department letterhead will be used to give a mailed response. Paper copies and CD's will be used for other records when email is not available.

Types of Responses:

- 1) Provide all requested records
- 2) Provide some requested records, with others exempted or redacted
- 3) State that all records are exempt
- 4) State that all the requested records could not be found or do not exist

Any request that states an exemption must be provided to the requestor and must cite the specific exemption as stated in Virginia Code.

Disclosure of Law Enforcement and Criminal Records:

115.06- Mandatory Releases: Virginia Code 2.2-3706

- 1) Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure unless the release would jeopardize an investigation in a felony case.
- 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 as long as they are not a person of interest in the case

- 4) 2.2-3706.1 Criminal incident information relating to felony offenses, including
 - a) general description of the criminal activity reported;
 - b) date the alleged crime was committed;
 - c) general location where the alleged crime was committed;
 - d) identity of the investigating officer or other point of contact; and
 - e) general description of any injuries suffered or property damaged or stolen.

115.07- Discretionary Releases: The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

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 not required to be disclosed in accordance with 2.2-3706.1.
2. 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 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;
3. 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;
4. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
5. 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;
6. 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;

7. 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;

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 the overall costs or expenses associated with undercover operations or protective details;

9. 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;

10. 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

11. 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.

12. Personnel information concerning identifiable individuals

115.08--Non-Criminal Records:

Public bodies: (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in 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.

115.09--Disclosure of law enforcement records; criminal incident information and certain criminal investigative files; limitations (Virginia Code 2.2-3706.1)

A. Criminal investigative files relating to an ongoing criminal investigation or proceeding are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except as provided in 2.2-3706.1(E) or where such disclosure is prohibited by law.

D. Criminal investigative files relating 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, to

- 1) The victim
- 2) The victim's immediate family members, 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;
- 3) The parent or guardian of the victim, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding
- 4) An attorney representing a petitioner in a petition for a writ of habeas corpus or writ of actual innocence pursuant to Chapter 19.2 (§ [19.2-327.2](#) et seq.) of Title 19.2 or any other federal or state post-conviction proceeding or pardon; and
- 5) 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, (a) an attorney or his agent when such attorney is considering representing a petitioner in a post-conviction proceeding or pardon, (b) 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, or (c) a person who is proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence pursuant to Chapter 19.2 (§ [19.2-327.2](#) et seq.) of Title 19.2 or any other federal or state post-conviction proceeding or pardon, who provides a sworn affidavit that the records being requested are material to such action. An attorney or his agent who is in receipt of criminal investigative files or has inspected criminal investigative files pursuant to clause (iv) or (v) shall not release such criminal investigative files or any information contained therein except as necessary to provide adequate legal advice or representation to a person whom the attorney either represents or is considering representing in a post-conviction proceeding or pardon or represents in a civil or criminal action.

115.10- Prohibited Releases:

- 1) The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed. Virginia Code Section 2.2- 3707(C).
- 2) Juvenile record information, as set out in Virginia Code Section 16.1-301, shall only be disclosed in accordance with Virginia Code Section 16.1-226.

- 3) Health records shall only be disclosed in accordance with Virginia Code Section 32.1- 127.1:03.
- 4) Social security numbers shall only be disclosed as set out in Virginia Code Section 59.1- 443.2 and other relevant provisions of state law.
- 5) Certain records maintained by Virginia State Police as described in Virginia Code Section 52-8.3 shall not be released.
- 6) Criminal history records, as defined in Virginia Code Section 9.1-101, may not be released except as provided in Virginia Code Section 9.1- 389. "Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ [16.1-226](#) et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

115.11- VFOIA Fees

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. Records will be emailed when possible. Costs associated with making a hard copy of the record will be charged based on the pages used or the media used to capture the record such as a CD or thumb drive.

Time to produce the records should be tracked and maintained. Any record exceeding a fifteen minute (15) of work time for a paid employee of the agency will be charged a nominal fee not to exceed allowable state limits. The fee will be calculated by using the formula Employee Salary X Time= Rate.

Notification in advance will be made for all FOIA requests that require a charge to include the estimate of the cost. An advance payment will be required for all FOIA requests determined to cost more than \$200. A written invoice will be sent to the requestor indicating the estimate of the request. Fiscal Affairs will provide an invoice number for tracking FOIA billing and payments. Per state code 2.2-3700(f) the requestor has 30 days to accept the cost associated with the production of their VFOIA request, if no response is given the request will be deemed to be withdrawn. The five-day clock stops at that time when the requestor receives the invoice. The clock will be restarted when the invoice is paid. There are no waiver provisions or exceptions to fees required.

Any previous unpaid VFOIA request of 30 days or older owed to the City of Fredericksburg will be paid prior to any new request being fulfilled.

115.12- Training:

The FOIA officer will complete training every two years through the Virginia FOIA Council.

115.13- Records Retention:

The Library of Virginia requires that FOIA records such as requests, responses, and billing information be retained for 3 years from the date of request.