

# **Rights & Responsibilities:**

## **The Rights of Requesters and the Responsibilities of York-Poquoson Sheriff's Office**

### **Under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is 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 only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

#### **Your FOIA Rights**

- You have the right to request to inspect and/or receive copies of non-exempt public records.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

#### **Making a Request for records from the York-Poquoson Sheriff's Office**

- You may request records 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.
  - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- 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 York-Poquoson Sheriff's Office, nor does it require the York-Poquoson Sheriff's Office to create a record that does not exist.
- You may choose to receive electronic records in any format used by York-Poquoson Sheriff's Office in the regular course of business.
  - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

**To request records from the York-Poquoson Sheriff's Office, you may direct your request to:**

**Lt. Dennis W. Ivey, Jr.  
York-Poquoson Sheriff's Office  
P.O. Box 99  
Yorktown Virginia, 23690,**

**Phone        757 890-3665  
Fax            757 890-3649  
E-mail        [dennis.ivey@yorkcounty.gov](mailto:dennis.ivey@yorkcounty.gov)**

**You may also contact him with questions you have concerning requesting records from the Sheriff's Office.**

**In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA.**

**The Council may be contacted by e-mail at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at 804-225-3056 or Toll free at 866-448-4100.**

### **The York-Poquoson Sheriff's Office Responsibilities in Responding to Your Request**

- The York-Poquoson Sheriff's Office must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the sheriff's office is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow the Sheriff's Office to require you to provide your name and legal address.
- FOIA requires that York-Poquoson Sheriff's Office make one of the following responses to your request within the five-day time period:

- 1) We provide you with the records that you have requested in their entirety.
  - 2) We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
  - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
  - 4) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you want). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.
  - 5) If it is practically impossible for the York-Poquoson Sheriff's Office to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

## **Costs**

- 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. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia.
- You may have to pay for the records that you request from the York-Poquoson Sheriff's Office. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, the York-Poquoson Sheriff's Office may require payment of the past-due bill before it will respond to your new FOIA request.

## **Types of records**

The following is a general description of the types of records held by York-Poquoson Sheriff's Office:

- Criminal Incident Information
- Arrest Records
- Criminal Investigations Information
- Other Investigations and Records
- Personnel records concerning employees and officials of the York-Poquoson Sheriff's Office

If you are unsure whether the York-Poquoson Sheriff's Office has the record(s) you seek, please contact

Lt. Dennis W. Ivey, Jr  
York-Poquoson Sheriff's Office  
P.O. Box 99  
Yorktown, Virginia 23690

Phone 757 890-3665  
Fax 757 890-4999  
E-mail [dennis.ivey@yorkcounty.gov](mailto:dennis.ivey@yorkcounty.gov)

### **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. The York-Poquoson Sheriff's Office commonly withholds records subject to the following exemptions:

- **Criminal Incident Information:** This is undoubtedly the type of information requested most frequently from law enforcement agencies, not only by the news media, but also by interested citizens and other requestors.

As defined in FOIA, this is minimal information about an event, frequently much less than an agency would typically disclose. Note, for example, that suspect descriptions, which are commonly made public in such cases as robbery, are not required components of "criminal incident information."

Following is a discussion of each of the required components.

“General description of the criminal activity reported”

This means the nature of the offense, though the specific criminal charge which may be involved need not be specified. For example, “sexual assault” may be used rather than the more specific terms of rape, sodomy, sexual battery and similar offenses.

“Drug law violation” could be used without specifying the substance involved or whether the case involved possession or distribution.

“The date and general location the alleged crime was committed”: A specific date may generally be provided, though in some cases a time frame may be appropriate. While the approximate time an event occurred is not required, it may be provided. Street and hundred block is one of the most frequently used methods of identifying location. However, if a street or block contains only several residences or buildings, use of a geographic, community or subdivision locator identity may be appropriate if protection of a victim’s identity is desired.

“Identity of the investigating officer”: Self-explanatory, but could include either an officer taking an initial report or an investigator assigned to follow up on a case. As a practical matter it may not be released as long as there is a point of contact for additional information, such as a public information officer.

“A general description of any injuries suffered or property damaged or stolen”: Phrases such as “stab wound,” “life-threatening injuries,” or “injuries which are not life threatening” are appropriate. Property may be described in such terms as “construction materials,” “household goods,” or “assorted merchandise.” Money may be described as “cash” and specific amounts are not usually disclosed.

Even this minimal amount of information may be withheld if one or more of the following circumstances apply should it be released:

- (1) Jeopardize an ongoing investigation or prosecution;
- (2) Jeopardize the safety of an individual;
- (3) Cause a suspect to flee or evade detection;
- (4) Result in the destruction of evidence.

While “criminal incident information” is required to be released for felonies only, release of such information in misdemeanor cases is not prohibited and we routinely release that information.

- Arrest Records

With the exception of juvenile offenders, the identities of persons arrested, the charges against them, and the status of the charge or arrest must be released. This applies to felony, misdemeanor and traffic arrests. However, the Code of Virginia, reflecting federal mandates, prohibits the dissemination of criminal history record information outside the law enforcement community by law enforcement agencies. Therefore, the release of arrest information is commonly understood to apply to “reasonably contemporaneous” arrests to avoid placing a law enforcement agency in the position of violating the restrictions on release of criminal history record information. Requestors seeking older information may be advised to check court records, which are public.

“Arrestee Photographs” Photograph of arrested individuals are not routinely held by the Sheriff’s Office. Those photographs are in the possession of the Virginia Peninsula Regional Jail and requests should be made to them. Photographs of adults who are arrested will not be released if doing so will not jeopardize an investigation. For example, a photograph may be withheld if the person is to appear in either a photo or live lineup to avoid possible tainting of the process.

- Protected Information

FOIA provides law enforcement agencies considerable leeway in protecting the identities of individuals with whom they may be involved in a variety of ways. The identities of victims, witnesses or undercover officers are usually not disclosed. Identities of persons providing information about a crime or criminal activity under a promise of anonymity (such as through a Crime Solvers program) will not be disclosed.

Records pertaining to neighborhood watch programs, including information pertaining to individual participants, are exempt from disclosure.

Also exempted from mandatory disclosure is information which reveals investigative techniques or procedures.

Records of reports submitted in confidence to state and local law enforcement agencies and campus police departments of colleges and universities are not disclosed.

- **Criminal Investigations Information**

This information enjoys extensive protection. Exempt from disclosure are all complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation (except for “criminal incident information” relating to felonies.) There is no requirement for release of criminal investigations information after a case is closed. In many cases it will be deemed essential to withhold portions of investigative reports even after a case has been adjudicated. On the other hand, there may be portions of some case investigations which it would be in the public interest to eventually disclose. FOIA leaves that decision within the sole purview of the law enforcement agency.

- **Other Investigations and Records**

While stating that all records kept by law enforcement agencies as required under Section 15.2-1722 (Certain Records to Be Kept by Police Chiefs and Sheriff’s) shall be subject to FOIA, there are some broad exemptions in furtherance of law enforcement purposes. The one with the most wide-ranging applicability relates to noncriminal incident or other investigative reports or materials. Those portions containing identifying information of a personal, medical or financial nature where the release of such information could jeopardize the safety or privacy of any person are exempted from disclosure. Examples of information which can and should be protected under this exemption are: reports of suicide attempts, medical information obtained during unattended death investigations, credit card numbers

and other identifying information recorded on lost property reports, and response to domestic disputes where no violence occurs.

9-1-1 recordings are not wholly exempted under the law. While those involving criminal investigations are wholly protected, those involving noncriminal incidents are only to the extent described above. For example, the words of a caller reporting a medical emergency could be excised from a recording (or deleted from a transcript) in order to protect individual privacy, but many of the words of the call-taker or dispatcher would be subject to release, as would such related records as response times.

Similar provisions, both as to exemption and release, apply to the in-car video recordings being utilized by an increasing number of law enforcement agencies. For example, a recording of a felony traffic stop and apprehension of a criminal suspect would be exempted as criminal investigative material. Those portions of a recording of a routine traffic stop containing identifying information regarding the occupants of the vehicle could be exempted while other portions would not. On the other hand, if there was a question of officer misconduct in connection with a traffic stop, the exemption pertaining to confidential administrative investigations would apply.

Exemptions are provided for: (1) Records of background investigations of applicants for law enforcement agency employment (whether an individual is hired or not) or other confidential administrative investigations, examples of which include internal affairs investigations or background checks for conservators of the peace; (2) Those portions of any records containing plans for or resources dedicated to undercover operations. For example, unmarked undercover vehicles could be excluded from agency's fleet roster, which would otherwise be releasable.

- Personnel Records

### **Policy regarding the use of exemptions**

In order to provide the public with certain entitled information, the York-Poquoson Sheriff's Office will comply with the Freedom of Information Act. Because of the specific language in the act and the

broad discretion granted to law enforcement agencies in dealing with the requirements of the act, the Sheriff's Office routinely exempts records from disclosure that meet the requirements of the law. The goal is to release the amount of information necessary to keep the public informed about criminal activity in the community and using exemptions to protect the personal information of those who have come into contact with the Sheriff's Office, and to protect the integrity of criminal and other types of investigations while still providing the public with as much information as one would expect.