

## Records Maintenance and Release

### 702.1 VERSION

Review Date	Effective Date	Approving Authority
06/11/19	07/09/18	Eric D. English, Chief of Police

### 702.2 POLICY AND PURPOSE

The Harrisonburg Police Department is committed to providing public access to records in a manner that is consistent with the Virginia Freedom of Information Act (FOIA) (Virginia Code §2.2-3700 et seq.).

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

### 702.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

### 702.4 CUSTODIAN OF RECORDS

The Chief of Police shall designate a Custodian of Records (Va. Code § 2.2-3704.2). The responsibilities of the Custodian of Records include, but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release and destruction of department public records.
- (b) Maintaining, updating and complying with the department records retention schedule, including:
  1. Identifying the minimum length of time the Department must keep records.
  2. Identifying the department bureau responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring the availability of a current schedule of fees for public records as allowed by law (Va. Code § 2.2-3704).

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- (g) Preparing and ensuring the following information is made available to the public upon request and posted on the department website as required by Va. Code § 2.2-3704.1.
  - 1. In plain English, a description of the basic rights of a person who requests public information, the responsibilities of the Department and the procedures, to include the cost of inspecting or obtaining copies.
  - 2. Contact information for the Custodian of Records.
  - 3. A general description, summary, list or index of the types of public records maintained by this department and exemptions in law that permit or require such records to be withheld from release.
  - 4. The policy concerning the type of public records the Department routinely withholds from release as permitted by law.
  - 5. The following statement: "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."
- (h) Acting as the department's FOIA officer, designating additional employees as FOIA officers to receive requests from the public, and ensuring updated contact information for the Records Custodian and any additional FOIA officers is maintained on the department's website or otherwise made easily available to the public as required by Va. Code § 2.2-3704.2.
- (i) Confirming that the online posting requirement relating to the Freedom of Information Advisory Council's comment form has been complied with as required by Va. Code § 2.2-3704.1.

#### **702.5 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

##### **702.5.1 REQUESTS FOR RECORDS**

The processing of requests for any record is subject to the following (Va. Code § 2.2-3704):

- (a) A request for records should be in writing, identify the requested records with reasonable specificity and include the name of the requester and his/her legal address.
- (b) The Department is not required to create records that do not exist.
- (c) A request for records shall be responded to promptly but in all cases within five working days of receiving the request. Failure to respond to a request shall be deemed a denial and a violation of FOIA. A request shall be responded to with one of the following:

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1. Provide the requested records to the requester.
2. If the records are not provided, supply a written response that the requested records are being withheld as exempted by law. The response shall identify the volume and subject matter of the withheld records and include the citation to the specific Code of Virginia statute authorizing the records to be withheld.
3. If the records are provided in part, supply a written response that the requested records are being provided in part and being withheld in part as prohibited by law. The response shall identify the subject matter of the withheld portions and citation to the specific Code of Virginia statute authorizing the records to be withheld. When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (Va. Code § 2.2-3704.01).
  - (a) A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
4. If the records cannot be found or do not exist, supply a written response explaining this. However, if it is known that another public body has the requested records, the response shall include the contact information for the other public body.
5. If the records cannot be provided within five working days, supply a written response that it is not practically possible to provide the requested records or to determine whether they are available within the five-workday period. The response shall specify the conditions that make the request impossible. If this response is made within five working days, the Department shall have an additional seven working days to provide the requester with a written response to the original request.
  - (a) If additional time is required to respond to a request because the request is for an extraordinary volume of records or an extraordinarily lengthy search is required, the Custodian of Records shall contact the requester to reach an agreement concerning additional time in which to respond to the request. If an agreement is not reached, legal counsel for the Department should be contacted for filing a petition to the appropriate court to obtain additional time to respond to the request.

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- (d) Nonexempt records maintained in an electronic database shall be produced in any tangible medium identified by the requester, if that medium is used by this department in the regular course of business.

#### 702.5.2 HANDLING A REQUEST FOR INFORMATION

Any employee of the department who receives a request for information or department records will treat that request as a VFOIA request. Upon receipt of a request by any person to inspect or copy any records of the department, the department employee receiving that request shall immediately forward the request to the Records Supervisor for response.

A requesting person does not need to cite the VFOIA, or to justify or explain the reason for a request for department records. Any employee receiving a request for inspection or copying of department records shall simply forward the request to the Records Supervisor.

All requests for records need to be made with “reasonable specificity,” however there is no particular, required format. Department members should be aware that VFOIA requests for inspection and copying of department records may be communicated by various means: verbal, written, electronic communication (e-mail), facsimile, etc. No employee of the department shall attempt to determine the validity or sufficiency of any person’s request without the concurrence of the Records Supervisor.

If a requested record or document does not already exist, the department is not required to create a record, or to put information into any particular format. However, the department may abstract or summarize information under such terms and conditions as may be agreed upon between the requesting party and the Records Supervisor.

The department shall provide records maintained in electronic formats or databases in such format or medium as may be required by Code of Virginia §2.2-3704 (G).

#### 702.5.3 REQUESTS FOR SENSITIVE SECURITY INFORMATION

If a request is received seeking information relating to the prevention or response to terrorist activity or cyberattacks (including information about infrastructure security plans and systems), and the release of the information might jeopardize the safety of any person or reveal the location of security or other sensitive systems or equipment, the Custodian of Records shall notify the Secretary of Public Safety and Homeland Security of the request and the department’s response to the request (Virginia Code §2.2-3705.2).

#### 702.5.4 VFOIA REQUESTS FROM MEDIA

Generally, VFOIA requests received from the media are to be handled under this policy. However, when a VFOIA request pertains to or seeks information about an ongoing criminal investigation or other sensitive operations, response to the VFOIA request shall also be handled consistently with the rules set forth within the Crime Analysis Policy.

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#### 702.5.5 RESPONSES

All responses to requests will be in compliance with the VFOIA and the department reserves the right to withhold information in accordance with the VFOIA. The Department's official response to a VFOIA request shall issue from the Records Supervisor.

Department personnel who have been contacted by the Records Supervisor regarding the need to respond to a request received by the department under the VFOIA shall immediately provide one of the following responses to the Records Supervisor, so he/she may prepare a timely response to the requesting party:

- (a) The requested records will be provided to the requester. In this case, true copies of the requested records will be forwarded to the Records Supervisor, or the Records Supervisor shall be provided with information as to a date, time and location that records will be made available at the department for inspection by the requesting party.
- (b) The records will be entirely withheld because law prohibits a release of such records. In this case, the Records Supervisor will be notified of the specific provisions of law that prohibit a release of the requested records, or which provisions exempt the requested records from the requirements of disclosure under VFOIA. If the responding personnel cannot cite a specific provision of law, then he/she may request the Records Supervisor to obtain guidance from the Commonwealth or City Attorney's Office.
- (c) The requested records will be provided in part and 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 compliance with the code section. As indicated in paragraphs (a) and (b), above, copies of records to be provided shall be forwarded to the Records Supervisor and documentation may be withheld only pursuant to a specific provision of law.
- (d) If it is not practically possible to provide the records or determine the availability within the five working day period, the Records Supervisor shall immediately be notified of this fact, and of the conditions that make a response impossible, so that he/she can prepare a written response communicating that fact to the requesting party. If the Records Supervisor is able to make this response to the requesting party within five business days, then the department will have an additional seven work days to make one of the preceding responses.

#### 702.5.6 MANDATORY RELEASE

When requested, records of completed suicide, accidental and natural death investigations where no criminal charges will be initiated shall be released 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 (Virginia Code §2.2-3706).

#### 702.5.7 WITHHOLDING INFORMATION

The department reserves all the rights granted under the VFOIA or other provisions of Virginia Law, to withhold or exempt certain records from disclosure.

Examples of departmental records that will be withheld include, but are not limited to the following:

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- (a) Any record that contains specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public (Virginia Code §2.2-3705.2 and §2.2-3706).
- (b) Non-criminal incident records, investigative reports or other department records or materials containing identifying information of a personal, medical or financial nature, where the release of such information would jeopardize the safety or privacy of any person (Virginia Code §2.2-3706;19.2-11.2).
- (c) Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject of the records, and public disclosure shall not be denied if the person who is the subject of the records has waived, in writing, the protection afforded by law to his or her personnel records (Virginia Code §2.2-3705.1).
- (d) Those portions of any record containing information related to plans for, or resources dedicated to undercover operations (Virginia Code §2.2-3706).
- (e) Records of background investigations of applicants for law-enforcement agency employment, or other confidential administrative investigations conducted pursuant to law (Virginia Code §2.2-3706).
- (f) Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than “criminal incident information” specifically required by law to be disclosed (Virginia Code §2.2-3706).
- (g) Any other information or records exempt from VFOIA, or which may be withheld at the discretion of the department, as set forth in the Code of Virginia.

#### **702.5.8 CHARGES FOR INFORMATION REQUESTED**

The Department will charge a reasonable amount for costs incurred in the supplying of information requested in compliance with the VFOIA. The charges will be calculated with respect to the labor and materials needed for the process of accessing, duplicating, supplying, and searching for requested records.

#### **702.6 RELEASE RESTRICTIONS**

Examples of release restrictions include:

- (a) Personal identifying information, including an individual’s photograph; Social Security and driver’s license identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver’s license record, motor vehicle record, or any department record, including traffic accident reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Personnel records containing information concerning identifiable employees (Va. Code § 2.2-3705.1).
- (c) Records that would disclose a employee’s telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to employees for use in the performance of their official duties (Va. Code § 2.2-3706).

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- (d) Personal information as defined in Va. Code § 2.2-3801, including but not limited to a driver's license number, Social Security number, agency-issued identification number, education, and medical history.
- (e) Personal contact information, as defined in Va. Code § 2.2-3705.1, furnished to the Department for the purpose of receiving electronic mail from this department provided the recipient has requested the non-disclosure.
- (f) Records that contain information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details (Va. Code § 2.2-3706).
- (g) Background investigation records of law enforcement employment applicants for law enforcement employment, administrative investigations relating to allegations of wrongdoing by employees, and other administrative investigations conducted by the Department that are made confidential by law (Va. Code § 2.2-3706).
- (h) The identity of any individual providing information about a crime or criminal activity under a promise of anonymity (Va. Code § 2.2-3706).
- (i) Victim or witness information as provided in Va. Code § 19.2-11.2.
- (j) Juvenile law enforcement records, except for those authorized to receive such information as provided in Va. Code § 16.1-301 and Va. Code § 16.1-309.
- (k) Criminal incident information where release would likely jeopardize 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 (Va. Code § 2.2-3706).
- (l) Criminal investigation files including complaints, court orders, notes, memoranda, 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 Va. Code § 2.2-3706(A)(1).
- (m) 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 (Va. Code § 2.2-3706).
- (n) Records relating to neighborhood watch programs (Va. Code § 2.2-3706).
- (o) Confidential records, including victim identities provided to staff of a rape crisis center or a program for battered spouses (Va. Code § 2.2-3705.2).
- (p) Documentation or other information that describes the design, function, operation, or access control features of any department security system used to control access to or use of any automated data processing or telecommunications systems, including the Statewide Agencies Radio System (STARS) (Va. Code § 2.2-3705.2).
- (q) Plans and information to prevent or respond to terrorist activity or cyberattacks, the disclosure of which would jeopardize the safety of any person (Va. Code § 2.2-3705.2).
- (r) Records that contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law enforcement personnel or the general public (Va. Code § 2.2-3706).

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- (s) Any other information that may be appropriately denied by Virginia law.

#### **702.7 SUBPOENAS AND DISCOVERY REQUESTS**

Any employee who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the Commonwealth's Attorney, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

#### **702.8 RELEASED RECORDS TO BE MARKED**

Each audio/video recording released shall include the department name and to whom the record was released.

#### **702.9 EXPUNGEMENT**

Expungement orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once a record is expunged, employees shall respond to any inquiry as though the record did not exist (Virginia Code §19.2-392.2).

#### **702.10 SECURITY BREACHES**

Employees who become aware that any Harrisonburg Police Department system containing personal information may have been breached should notify the Records Supervisor as soon as practicable.

The Records Supervisor shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person (Va. Code § 18.2-186.6). Notice shall also be provided to the Office of the Attorney General. Notice shall be in the form and manner specified in Va. Code § 18.2-186.6.

Notice shall be given as soon as reasonably practicable and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system. Notice may be delayed if notification will impede a criminal or civil investigation or homeland or national security (Va. Code § 18.2-186.6).



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If notification is required to more than 1000 persons at one time, notice of the timing, distribution and number of notices sent as a result of the breach shall be provided to the Office of the Attorney General and all consumer reporting agencies as specified in Va. Code § 18.2-186.6.

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with, and linked to, any one or more of the following:

- (a) Social Security number
- (b) Driver's license number or Virginia identification card number
- (c) Full account number, credit, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial accounts
- (d) Passport number
- (e) Military identification number

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Records Supervisor should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

#### **702.10.1 BREACH OF TAXPAYER IDENTIFICATION DATA**

In the event that both the taxpayer identification number of any department employee and the amount of income tax withheld for that employee are breached, the Records Supervisor shall notify the Office of the Attorney General in accordance with Virginia Code. §18.2-186.6(M).

#### **702.11 TRAINING**

The Custodian of Records and any additional FOIA officers should receive annual training on Virginia's FOIA statute from the department's legal counsel or the Virginia Freedom of Information Advisory Council (Virginia Code §2.2-3704.2). The procedures should include providing notices and updates to the Council as required by Virginia Code §2.2-3704.2.