

Fairfax County Federation of Citizens Associations
Legislative Program Issues Evaluation Form

Issue ID: 17P03-Law Enforcement VFOIA

Date Submitted to Legislative Committee: 10-18-2016

Issue: Amend the Virginia Freedom of Information Act (VFOIA) consistent with the Federal FOIA to:
1. Specifically allow Law Enforcement (LE) reports of incidents involving LE shootings to be released with legally required redactions of sensitive information.
2. Specifically allow the release of all LE records, unless an Exemption 7 item (A) through (F) of the Federal FOIA (see below) is specifically named, is evident, and is demonstrable.

Background: (Previously submitted as 16P01 on 10-22-2015): The Federal Freedom of Information Act (FOIA) in 5 U.S. Code §552 (<https://www.law.cornell.edu/uscode/text/5/552>) allows any person—individual or corporate, citizen or not—to request and obtain, without explanation or justification, existing, identifiable, and unpublished agency records on any topic. Pursuant to the Federal FOIA, the public has presumptive access to agency records unless the material falls within any of FOIA’s nine categories of exemption. **Exemption 7 [5 U.S. Code § 552(b)(7)(A) - (F)]** permits withholding investigatory records or information compiled for law enforcement purposes where:
(A) Interference with law enforcement proceedings can be reasonably expected.
(B) A person would be deprived of a fair trial or an impartial adjudication.
(C) An unwarranted invasion of personal privacy could reasonably be expected.
(D) Revealing a confidential source or information provided by a confidential source could reasonably be expected
(E) Techniques and procedures for law enforcement investigations or prosecutions would be disclosed or guidelines for law enforcement investigations or prosecutions would be disclosed, provided such disclosure could reasonably be expected to risk circumvention of the law.
(F) Endangering the safety or life of any individual could reasonably be expected.

The Virginia FOIA (VFOIA) in *Code of Virginia* § 2.2-3700 et seq. (<http://law.lis.virginia.gov/vacode/title2.2/chapter37/>) 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.

Existing Conditions/Impacts: Pursuant to the VFOIA, all public records are presumed to be open to the public and may only be withheld if a specific statutory exemption applies; however, on many occasions, police records have been withheld on the basis of a “statutory exemption” regarding the release of Law Enforcement information. Such lack of openness has created an atmosphere of deep distrust of Police and open resentment within the media and other public.

Preferred Position: Amend the VFOIA to *specifically allow* release of information related to LE-involved shootings and other LE practices and procedures related to LE activities while allowing the redaction of sensitive information. The amended act should additionally encourage transparency and accountability by establishing a culture of disclosure within the organizations.

Benefits: The purpose of the VFOIA is to promote increased awareness of governmental activities. In furthering of this policy, VFOIA already requires that the law be interpreted liberally and in favor of access, and that any exemption must be interpreted narrowly. However, in many cases, access to police records has been denied due to embedded easily redactable information or other exceptions and exemptions. The amendments would ensure the specific release of certain non-sensitive information, thus encouraging renewed public trust in LE activities and policies.

Potential Supporters (Community leaders, Public/Private Partnership Opportunities, Organizations):
Fairfax County Board of Supervisors’ Ad Hoc Police Practices Review Commission’s Communications Subcommittee;
Fairfax County State Senators and Delegates; Fairfax County Federation of Citizens Associations (FCFCA)

Lead Federation Committee: Public Safety

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