



<i>WRITTEN DIRECTIVE</i>	No. <b>PD15-1304</b>	Page: <b>Page 1 of 12</b>
Subject:  <b>REQUEST / RELEASE OF RECORDS</b>	Effective Date:	<b>01-30-15</b>
	Supersedes/Amends:	<b>PD14-1304</b>
	Reference:	<b>82.1.1, 82.1.2</b>



I. Purpose

The purpose of this directive is to provide departmental guidelines for the request and release of records in compliance with the Virginia Freedom of Information Act (Chapter 37 of the Code of Virginia).

II. Policy

It shall be the policy of the Lynchburg Police Department to adhere to the Code of Virginia regarding the request and required release of certain records, while simultaneously maintaining necessary confidentiality of other records.

III. Procedure

A. Requests for Records

1. When officers obtain a criminal history on a person, a record of the request will be kept in a log at the Information Desk.
2. No criminal history shall be disseminated until the request has been logged.
3. Once the criminal history information has been used for its intended purpose, it shall be destroyed.
4. Who may legally request and receive certain criminal history information
  - a. By Virginia State Code 19.2-389, a person's criminal history information may be disseminated, either directly or through an intermediary; only to the people or agencies listed in that code's sections 1 through 37.
  - b. Even though an agency, entity, or person may be cited in 19.2-389 (1-37) there may still be limitations on the type or extent of disclosure allowed.
  - c. For purposes of operations within the Lynchburg Police Department, Information Desk personnel will only act on a request, for criminal history information, made by authorized law

enforcement officers serving the Lynchburg City jurisdiction. This will include sworn officers from other agencies that have authority in this jurisdiction.

- d. For other requests, which may still fall into the 19.2-389 guidelines, the requestor will either be directed to the Lynchburg Police Departments Records Unit or directed to fill out the SP-167 form (State Police Request for Criminal History Check) and mail it to the address listed on the form.
  - e. Any questions regarding the release of information, outside of normal office hours, shall be directed to the on duty supervisor who will make a determination concerning the release of information.
  - f. Under no circumstances will an employee of the Lynchburg Police Department release Criminal History Record information to a person who is not known to them personally, as an authorized recipient, or to a person who has not proven their authorization to receive the information under Virginia Code 19.2-389.
  - g. No employee of the Lynchburg Police Department shall confirm the existence or non-existence of a criminal record, concerning any individual, for employment or licensing inquires except as provided by law.
5. Items not to be released upon request for a Criminal History Record check are:
- a. Traffic offense records
  - b. Criminal investigative files
  - c. Any information regarding a current investigation
  - d. Communications between employees of LPD
6. Making a request for Criminal History Record check
- a. For law enforcement personnel, in the course of their duties, the request may be made to dispatch either in person, by telephone, or by radio. It is up to the requester to identify him/herself and be specific with their request.
  - b. Information Desk staff will ensure that they know who is making the request for purposes of logging the information into the log book.

- c. Officers should limit requests for Criminal History Records over the radio to situations involving an immediate need for the information. The Information Desk should make every attempt to limit responses to positive or negative and not give out arrest details.
- d. Request for criminal history checks, while out in the field, still requires a signature in the dissemination log at the Information Desk.
- e. Request for Criminal History checks are sometimes phoned in to the Information Desk by agencies authorized in 19.2-389. Unless the request is urgent, these requests will be referred to either the SP-167 form or given information to contact the Lynchburg Police Departments Records Office, if it is a Lynchburg Police Department record being checked.

#### 7. Dissemination and Recording of Criminal History Information

- a. When disseminating Criminal History Records information to a criminal justice agency, all pertinent and accurate information in the record may be released.
- b. When disseminating information to the non-criminal justice agencies, authorized in 19.2-389, only the conviction data on class 3 and 4 misdemeanor offenses will be released.
- c. No employee shall disseminate any non-conviction information on felonies or class 1 or 2 misdemeanors on any individual to any of the non-criminal justice agencies or individuals listed in 19.2-389.
- d. The Lynchburg Police Department dissemination log will be kept for a period of not less than three (3) years after the date of dissemination. The employee releasing the information shall enter the following information into the log:
  - 1. Date of dissemination
  - 2. Name (and unit number or title) of person requesting the information
  - 3. Name of agency the requestor works for
  - 4. Name of person whose record was disseminated
  - 5. Name of employee disseminating the information.

- 8. Media requests for certain records may be done either verbally or in writing and include:

- a. Vehicle accident related records for completed investigations:
    - 1) The media may be referred to the investigating officer, the investigating officer's supervisor or to the department PIO for the general release of incident information related to a vehicle accident.
    - 2) The media shall be referred to the Division of Motor Vehicles to obtain a copy of an accident report. Members of the media are not entitled to copies of accident reports prepared by this department.
    - 3) Media representatives are not permitted to purchase a copy of a Vehicle Accident Report for any reason.
  - b. Misdemeanor records that do not violate the provisions cited in Section III, D, 2, of this directive.
  - c. Certain Crime Analysis Records
  - d. Other records deemed necessary for release for public safety as determined by a supervisor
  - e. Media representatives do not have any more rights to public records than do citizens.
  - f. All IBR reports are considered criminal investigation information: IBR copies will not be released to or viewed by media representatives or members of the public at any time.
9. To release vehicle accident reports or records, a requester must be one of the following:
- a. Subject of the records
  - b. Parent or guardian of the records
  - c. The authorized representative of the subject of the records (as an attorney and insurance company), or
  - d. The owner of the vehicle that is the subject of the records
10. All other requests for records from a requesting party may be in any of the following forms:
- a. Subpoena *Duces Tecum*, requiring release of certain records
  - b. Letter

- c. Memorandum
  - d. Written Note
  - e. Verbal (as long as requested records are identified sufficiently)
11. An employee of this department receiving any of these requests will forward the request, or the requestor, to the Professional Standards Division Captain, who will be responsible for:
- a. reviewing the information request, and clarifying the request as necessary
  - b. gathering and reviewing the requested records
  - c. forwarding the records request to the City Attorney for review and approval for release when necessary
  - d. releasing the records when deemed appropriate (under the provisions of FOIA) or upon approval by the City Attorney
12. When appropriate, the Professional Standards Division Captain will forward for review VFOIA and subpoena *duces tecum* requests to the City Attorney.
- a. The City Attorney will review the request to determine if records release is appropriate.
  - b. Where a subpoena *duces tecum* is issued, the City Attorney may elect to file a *Motion to Quash* with the court to prevent records release.
13. Any person making a request for records is not obligated to inform the department as to the reason for such request.

#### B. Release of Records

1. The Lynchburg Police Department has adopted the *predisposition to disclose* approach in the release of records under the provisions of the Virginia Freedom of Information Act (VFOIA).
2. The Lynchburg Police Department is not a federal agency and therefore not subject to the provisions of the federal Freedom of Information Act.
3. Using this approach, the department identifies only those records that can be withheld, in lieu of records that require release under the Virginia FOIA.
  - a. VFOIA does not provide for “standing requests”, as for all future criminal incident records.

- b. VFOIA can be applied only to records that already are in existence.
  - c. Incarcerated persons and out-of state residents are not afforded the right to obtain records under VFOIA.
  - d. VFOIA does not require an agency to produce or create a new document if the requested public record is not recorded or does not exist.
  - e. The VFOIA does not require an agency to abstract or summarize records in response for a citizen request.
  - f. The VFOIA does not require an agency to answers questions a citizen may have, but to respond to requests for records. This does not preclude the agency from responding to questions should it choose to do so.
  - g. The VFOIA does not require an agency to clarify or interpret the records provided.
4. Upon receipt of a FOIA request, an initial written response must be made by the department within time frames outlined in the Virginia Freedom of Information Act after the request is received in one of the following forms:
- a. Make the requested record(s) available
  - b. Decline to furnish the requested record(s), citing the FOIA section that exempts, restricts, or prohibits their release.
  - c. If only a portion of the record(s) requested are exempt from disclosure:
    - 1) delete or excise (redact) the portion that is exempted, making the remainder available for release, and
    - 2) cite the section of the FOIA or other statute that allows the exemption.
  - d. If the requested records cannot be identified within five working days:
    - 1) respond in writing stating this to the requestor
    - 2) with this response, an additional seven days is allowed to identify the records and respond to the request
    - 3) in unusual circumstances, a petition may be made by the department to the circuit court for more time to respond, if a mutual agreement is not reached with the requestor.

5. Actual costs for copying records or for staff time spent on researching and locating records may be recovered from the requestor.
  - a. Actual costs means the actual cost per page for copying or the hourly rate of any staff member involved; however, overhead costs are not included (as electricity, building maintenance, etc.)
  - b. The department may waive such costs depending upon time involved and other costs
  - c. If estimated costs of the reproduction of records will exceed \$200, the department requires a citizen to pay the costs in advance.
  - e. The Professional Standard's Division Captain will assess the need to charge for processing information requests on a case-by-case basis, and may confer with the Chief of Police as necessary.

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6. Criminal Incident Records for felonies that shall be released:
  - a. General description of the criminal activity reported
  - b. Date and general location the alleged crime was committed
  - c. Identity of the investigating officer
  - d. Identity of adults who have been arrested and the status of the charges
  - e. General description of any injuries suffered or property damaged or stolen
7. The Records Unit may release computer generated *Verification Reports* for felonies that convey releasable records to a requesting party.
8. Criminal Incident Records may be withheld if one or more of the following circumstances apply:
  - a. Jeopardizing an ongoing investigation or prosecution
  - b. Jeopardizing the safety of an individual
  - c. Causing a suspect to flee or evade detection
  - d. Resulting in the destruction of evidence
9. Exemptions from disclosure for Criminal Investigations Records include all:
  - a. Complaints

- b. Memoranda
  - c. Correspondence
  - d. Evidence
10. Criminal Investigative materials remain protected when given to the Office of the Commonwealth's Attorney for prosecution.
11. Criminal Incident Records may be withheld only until the specified damage is no longer likely to occur from release of the records.
12. Members of this department will not disclose the identity of persons who have furnished records under a promise of anonymity.
13. Release of records in misdemeanor cases:
- a. is not prohibited (unless any of the provisions cited in section B, 8 apply).
  - b. may be done so to inform the community about problems, such as vandalism, thefts from vehicles, etc.
14. Arrest Record Releases
- a. The identities of adults arrested for felonies, misdemeanors, and traffic charges must be released without exception. The release of arrest records must meet the guideline of "Reasonably Contemporaneous."
  - b. The Code of Virginia prohibits the dissemination of criminal history records outside the law enforcement community.
    - 1) The release of arrest records must meet the guideline of "reasonably contemporaneous" arrests.
    - 2) Requestors seeking older records are to be referred to court records, which are public.
  - c. Juvenile arrest records will not be released for any reason, except by court order.
15. Arrestee Photographs
- a. It is required that photographs of all arrested adults be released if doing so will not jeopardize an investigation or prosecution.

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- b. The requirement to release photographs applies to all adult arrests in both felony and misdemeanor cases.
  - c. 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; however, once this process is completed, the photo must be released.
  - d. A fee may be charged for photographs released to non-law enforcement entities.
16. Dispatch tapes from LynComm generally must be disclosed, unless all or portions thereof meet the exemption criteria described within the FOIA.
  17. The Police Department PIO or a designated supervisor will make press releases that address serious matters to the media as needed.

### C. Protected Records

1. All criminal investigations information and Incident Reports
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2. All juvenile related records
  3. Criminal Investigation Records
  4. Identities of victims, witnesses, informants, or undercover officers
  5. Identities of persons providing records regarding a crime or criminal activity under a promise of anonymity
  6. Non criminal incident or other investigative reports or materials containing identifying information of a personal, medical, or financial nature, if a release of the information will jeopardize the safety or privacy of any person.
  7. Records pertaining to Neighborhood Watch Programs, including records of individual participants
  8. Records that reveal investigative techniques or procedures
  9. Records of reports to state and local law enforcement agencies and campus police departments of colleges and universities
  10. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of any courthouse, jail, detention or law-enforcement facility.

11. Other records protected by Federal and State statute.

D. Procedure for Challenging the Accuracy of Criminal Records

1. Individuals may challenge their own criminal arrest records, which are held by the Lynchburg Police Department, if they believe there has been an error.
2. The individual challenging the record must submit the appropriate form in person to the Lynchburg Police Department Records Unit.
3. A copy of the challenged record may be furnished to the individual for review but must be marked “not to be disseminated further, except as provided by law.”
  - a. If a challenge is made regarding a record held by the Lynchburg Police Department, then any electronic or “hard copy” files will be flagged as a “Challenged Record.” All dissemination of this record will contain the “Challenged Record” message while the record is being reviewed.
  - b. If the challenge pertains to the arrest information held by the Lynchburg Police Department, the Records Office shall examine all relevant files and determine if there is any validity to the challenge.
  - c. If no errors are found in the record, the Lynchburg Police Department shall notify the individual or his attorney of the actions taken.
  - d. If the challenge pertains to the disposition information, the Records Office shall compare their record with the record supplied by the Clerk of the Court.
    1. If no errors are found, the Lynchburg Police Department shall forward the “challenge” to the Clerk of the Court, which supplied the disposition for the record being challenged.
    2. The Lynchburg Police Department shall then notify the individual or his attorney of the actions taken.
    3. The Clerk of the Court will examine the court records and determine if there are any discrepancies between the arrest records of the Lynchburg Police Department, the disposition record of the court, and the record of any other party to the action.

4. After examining the records the Clerk of the Court shall notify the Lynchburg Police Department and the individual what, if any, corrective actions were taken.

#### E. Administrative Review

1. If not satisfied with the results of the review by the Records Office and the Clerk of the Court, the individual may submit in writing a request that the Lynchburg Police Department review the challenge.
2. The request must be made within thirty (30) days after receiving notification of the results from the examination by the Clerk of the Court.
3. The Lynchburg Police Department may then review the challenge and the actions that have taken place up to that point.
4. The Lynchburg Police Department will notify the individual or their attorney of the results of the review within thirty (30) days of the request for administrative review.

#### F. Corrections to a Record

1. If an error is discovered, all known copies of the record shall be corrected by notifying all appropriate agencies and individuals, in writing, of the corrections to be made to the record.
2. This notification, to agencies and individuals, will include the request that they too notify any and all additional agencies that they know to maintain such records of the corrections to be made.
3. Upon request, an individual or his attorney shall be given the names of all non-criminal justice agencies to which Criminal History Record information has been furnished.

#### G. Penalties

1. The Virginia Code 9.1-135 & 9.1-136 provides remedies and criminal penalties for the improper dissemination of criminal history record information.
2. The disclosure of information can take many forms including casual conversation, inadvertently leaving criminal history record information where it can be seen or read by unauthorized people or releasing information (with good intentions) to unauthorized people.

3. All members of the Lynchburg Police Department are expected to familiarize themselves with all the Virginia Codes pertaining to Criminal History Record Information.

*Original Signed*

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Parks H. Snead  
Chief of Police

May 20, 2015

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Date