	Winchester City Sheriff's Office Manual of General Orders Administration 110	Effective Date: May 1, 2014 Accreditation Standards: ADM .22.03
		Original Policy: May 1, 2014 Last Review Date: October 31, 2023 Next Review Date: October 31, 2024
Subject: FOIA		By Authority of: <hr/> William E Sales, Sheriff

I. PURPOSE

This General Order is issued for the purpose of establishing procedures for assisting employees in complying with the Virginia Freedom of Information Act (VFOIA), Virginia Code § 2.2-3700 to 2.2-3714.

The VFOIA creates a general rule of mandatory disclosure. Except as otherwise specifically provided by law, it permits any Virginia citizen, or representative of news media circulating or broadcasting in or into Virginia, to inspect and copy public records during the regular office hours of the custodian of the records. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

II. POLICY

It is the policy of the Winchester City Sheriff's Office to treat every oral and/or written request for records as a request under the VFOIA whether or not that law is explicitly cited in the request. However, a request for public records shall identify the requested records with reasonable specificity.

III. DEFINITIONS

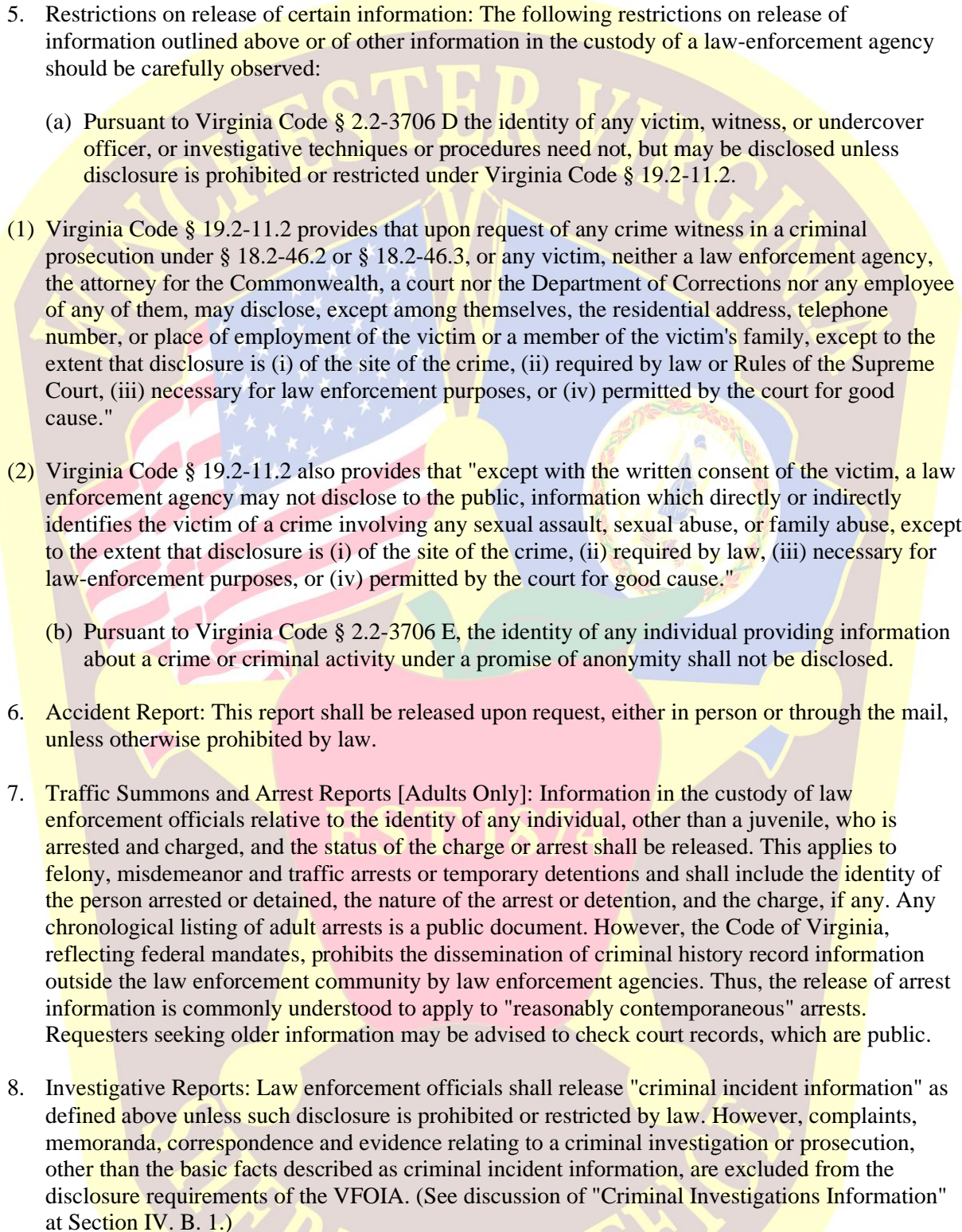
For purposes of the Virginia Freedom of Information Act, and this General Order, unless the context requires a different meaning, the following terms shall have the meanings indicated:

- A. Criminal Incident Information means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.
- B. Criminal Investigative File means 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, other than criminal incident information.
- C. Public Body means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions.

- D. Public Records means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

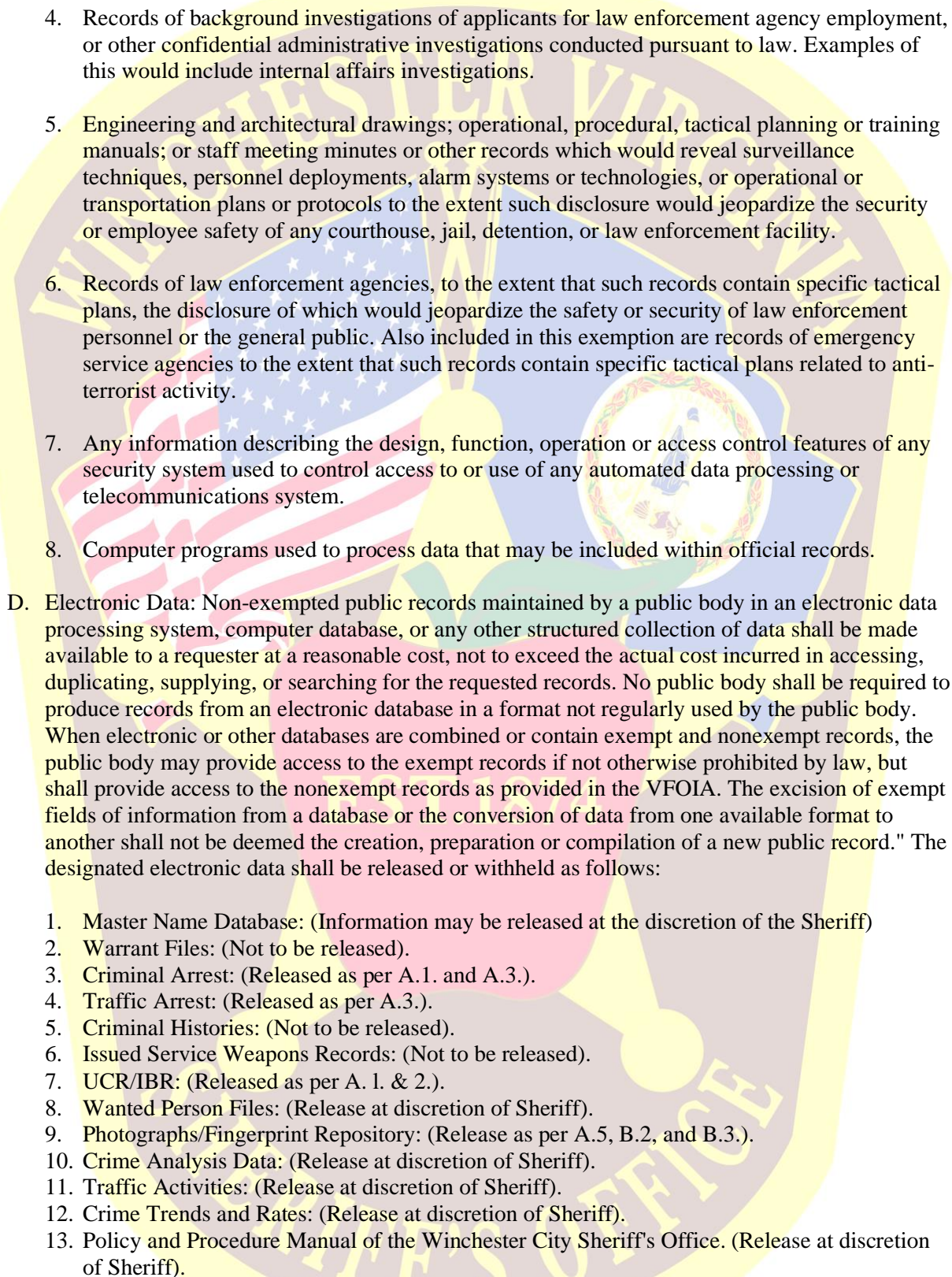
IV. DISCLOSURE OF CRIMINAL RECORDS; LIMITATIONS

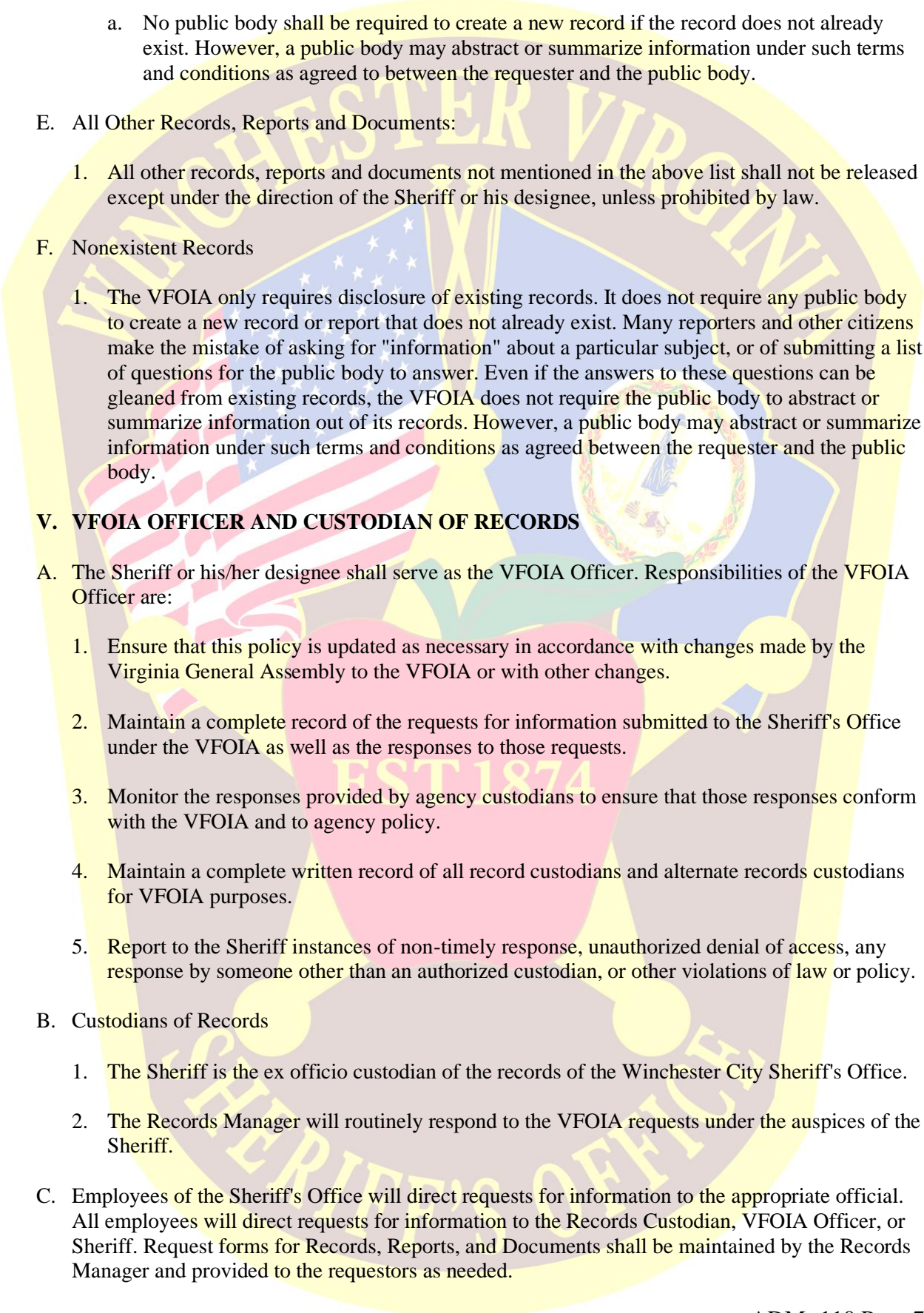
- A. Records Subject to Mandatory Release-- The following records, reports and documents shall be released by the custodian of records, except where such disclosure is restricted or prohibited by Virginia Code § 2.2-3706. This section regulates what criminal records may or may not be released. Section B states:
- a. Law enforcement officials shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an 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, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.
- While "criminal incident information" is required to be released for felonies only, release of such information in misdemeanor cases is not prohibited. The VFOIA should be consulted in all cases of requests that are not clear to the Records Custodian.
- Criminal incident information includes the following, unless otherwise restricted or prohibited by law:
1. General Description of Criminal Activity: This means the nature of the offense, though the specific criminal charge that 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.
 2. Date and general location the alleged crime was committed: A specific date should 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 blocks 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.
 3. Identity of investigating officer: This could include either an officer taking an initial report or an investigator assigned to follow up on a case, either or both.
 4. General description of injuries suffered, 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."

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5. Restrictions on release of certain information: The following restrictions on release of information outlined above or of other information in the custody of a law-enforcement agency should be carefully observed:
- (a) Pursuant to Virginia Code § 2.2-3706 D the identity of any victim, witness, or undercover officer, or investigative techniques or procedures need not, but may be disclosed unless disclosure is prohibited or restricted under Virginia Code § 19.2-11.2.
- (1) Virginia Code § 19.2-11.2 provides that upon request of any crime witness in a criminal prosecution under § 18.2-46.2 or § 18.2-46.3, or any victim, neither a law enforcement agency, the attorney for the Commonwealth, a court nor the Department of Corrections nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law enforcement purposes, or (iv) permitted by the court for good cause."
- (2) Virginia Code § 19.2-11.2 also provides that "except with the written consent of the victim, a law enforcement agency may not disclose to the public, information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse, or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause."
- (b) Pursuant to Virginia Code § 2.2-3706 E, the identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.
6. Accident Report: This report shall be released upon request, either in person or through the mail, unless otherwise prohibited by law.
7. Traffic Summons and Arrest Reports [Adults Only]: Information in the custody of law enforcement officials relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released. This applies to felony, misdemeanor and traffic arrests or temporary detentions and shall include the identity of the person arrested or detained, the nature of the arrest or detention, and the charge, if any. Any chronological listing of adult arrests is a public document. 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. Thus, the release of arrest information is commonly understood to apply to "reasonably contemporaneous" arrests. Requesters seeking older information may be advised to check court records, which are public.
8. Investigative Reports: Law enforcement officials shall release "criminal incident information" as defined above unless such disclosure is prohibited or restricted by law. However, complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than the basic facts described as criminal incident information, are excluded from the disclosure requirements of the VFOIA. (See discussion of "Criminal Investigations Information" at Section IV. B. 1.)

9. Arrestee Photographs: It is required that photographs of adults who are arrested be released if doing so will not jeopardize an investigation. The arrestee photograph may be withheld until such time as the release of the photograph will no longer jeopardize the 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. However, once these activities are concluded, the photo must be released. If several agencies are involved in an investigation, coordination is essential to insure that the release of a photo by one agency does not jeopardize the investigation of another agency. There are no requirements in VFOIA relating either to size or quality of adult arrestee photographs. It is important to note that the requirement to release applies to all adult arrestees who are photographed, regardless of whether they are charged with a felony or a misdemeanor. Unprocessed film does not constitute an existing record and the requirement to release does not apply until a photograph has been developed and printed.
 10. Personnel Records: Records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any employee of the Sheriff's Office shall be released upon request. However, these provisions shall not require public access to records of the official salaries or rates of pay of any such public employees whose annual rate of pay is \$10,000.00 or less. NOTE: Other than the information outlined above, personnel records containing information concerning identifiable individuals are exempt from disclosure under VFOIA. However, present and past employees, eighteen years of age or older, have an absolute right to see their own personnel records. Present and past employees may waive in writing the confidentiality of his or her personnel records. If the Sheriff's Office receives a signed waiver from the present or past employee, it must then produce that person's personnel records for other requesters, including the news media.
 11. Reportable Incident Reports: A compilation of complaints received by the Sheriff's Office and action taken by the law enforcement agency in response thereto.
- B. Records Subject to Discretionary Disclosure or Withholding: The following records, reports and documents are excluded from disclosure under the provisions of VFOIA, but may be released by the custodian of records at the discretion of the Sheriff, except where such disclosure is prohibited by law:
1. Criminal Investigations Information: Exempt from mandatory disclosure are all complaints, memoranda, correspondence and evidence relating to a criminal investigation (except for "criminal incident information" relating to felonies). The VFOIA should be consulted before refusing to release this information. Commonwealth's Attorneys are specifically defined as law enforcement officials, so criminal investigative materials remain protected when they are turned over to a prosecutor by a law enforcement agency. Such information may be released at the discretion of the Sheriff, but such a discretionary release shall be made only upon completion of a criminal investigation unless the Sheriff directs otherwise.
 2. Non-criminal incident or other investigative reports or materials: Exempt from disclosure are those portions of such reports or materials containing identifying information of a person at medical or financial nature provided to a law enforcement agency where the release of such information would jeopardize the safety or privacy of person(s). 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.
3. Adult arrestee photographs are excluded from disclosure when necessary to avoid jeopardizing an investigation in felony cases; such exclusion continues until such time as release of the photograph will no longer jeopardize the investigation. See "Arrestee Photographs" at Section IV. A. 5 herein.
 4. Reports submitted in confidence to (i) state and local law enforcement agencies, (ii) investigators authorized pursuant to Virginia Code § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Virginia Code § 23-232 et seq. need not but may be disclosed unless disclosure is prohibited or restricted by law.
 5. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity will not be released. NOTE: Virginia Code § 2.2-3706 E expressly provides that the identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.
 6. Records involving Neighborhood Watch Programs. The names, addresses, and operating schedules of individual participants in the program that are provided under a promise of anonymity will not be released.
 7. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment need not but may be released unless disclosure is prohibited or restricted by law.
 8. The identity of victims, witnesses, or undercover officer(s), or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under Virginia Code § 19.2-11.2. (See discussion of the "Restrictions on release of certain information" at the end of Section IV. A. 1. herein.)
- C. Exempt Non-Criminal Records of Law Enforcement Agencies-- The following non-criminal records, reports and documents are, in general, excluded from disclosure under the provisions of the VFOIA:
1. Those portions of non-criminal incident or other investigative reports or materials containing identifying information of a personal, medical, or financial nature provided to a law enforcement agency where the release of such information could jeopardize the safety or privacy of any person. Examples of such 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.
 2. Information that reveals investigative techniques or procedures. The Sheriff has the option to disclose these.
 3. Those portions of any records containing information related to plans for or resources dedicated to undercover operations. For example, unmarked undercover vehicles could be excluded from the agency's fleet roster, which would otherwise be releasable.

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4. Records of background investigations of applicants for law enforcement agency employment, or other confidential administrative investigations conducted pursuant to law. Examples of this would include internal affairs investigations.
 5. Engineering and architectural drawings; operational, procedural, tactical planning or training manuals; or staff meeting minutes or other records which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational or 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.
 6. 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. Also included in this exemption are records of emergency service agencies to the extent that such records contain specific tactical plans related to anti-terrorist activity.
 7. Any information describing the design, function, operation or access control features of any security system used to control access to or use of any automated data processing or telecommunications system.
 8. Computer programs used to process data that may be included within official records.
- D. Electronic Data: Non-exempted public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided in the VFOIA. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record." The designated electronic data shall be released or withheld as follows:
1. Master Name Database: (Information may be released at the discretion of the Sheriff)
 2. Warrant Files: (Not to be released).
 3. Criminal Arrest: (Released as per A.1. and A.3.).
 4. Traffic Arrest: (Released as per A.3.).
 5. Criminal Histories: (Not to be released).
 6. Issued Service Weapons Records: (Not to be released).
 7. UCR/IBR: (Released as per A. 1. & 2.).
 8. Wanted Person Files: (Release at discretion of Sheriff).
 9. Photographs/Fingerprint Repository: (Release as per A.5, B.2, and B.3.).
 10. Crime Analysis Data: (Release at discretion of Sheriff).
 11. Traffic Activities: (Release at discretion of Sheriff).
 12. Crime Trends and Rates: (Release at discretion of Sheriff).
 13. Policy and Procedure Manual of the Winchester City Sheriff's Office. (Release at discretion of Sheriff).

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- a. No public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed to between the requester and the public body.
- E. All Other Records, Reports and Documents:
- 1. All other records, reports and documents not mentioned in the above list shall not be released except under the direction of the Sheriff or his designee, unless prohibited by law.
- F. Nonexistent Records
- 1. The VFOIA only requires disclosure of existing records. It does not require any public body to create a new record or report that does not already exist. Many reporters and other citizens make the mistake of asking for "information" about a particular subject, or of submitting a list of questions for the public body to answer. Even if the answers to these questions can be gleaned from existing records, the VFOIA does not require the public body to abstract or summarize information out of its records. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

V. VFOIA OFFICER AND CUSTODIAN OF RECORDS

- A. The Sheriff or his/her designee shall serve as the VFOIA Officer. Responsibilities of the VFOIA Officer are:
- 1. Ensure that this policy is updated as necessary in accordance with changes made by the Virginia General Assembly to the VFOIA or with other changes.
 - 2. Maintain a complete record of the requests for information submitted to the Sheriff's Office under the VFOIA as well as the responses to those requests.
 - 3. Monitor the responses provided by agency custodians to ensure that those responses conform with the VFOIA and to agency policy.
 - 4. Maintain a complete written record of all record custodians and alternate records custodians for VFOIA purposes.
 - 5. Report to the Sheriff instances of non-timely response, unauthorized denial of access, any response by someone other than an authorized custodian, or other violations of law or policy.
- B. Custodians of Records
- 1. The Sheriff is the ex officio custodian of the records of the Winchester City Sheriff's Office.
 - 2. The Records Manager will routinely respond to the VFOIA requests under the auspices of the Sheriff.
- C. Employees of the Sheriff's Office will direct requests for information to the appropriate official. All employees will direct requests for information to the Records Custodian, VFOIA Officer, or Sheriff. Request forms for Records, Reports, and Documents shall be maintained by the Records Manager and provided to the requestors as needed.

D. Violation of Virginia Freedom of Information Act-- Employees of the Winchester City Sheriff's Office shall comply with the Virginia Freedom of Information Act and this policy. The following acts shall be considered violations of this policy and may result in disciplinary action and/or civil penalties:

1. Refusal to release information as required by state law and this policy.
2. Release of information to the public by employees other than those employees authorized by the Sheriff to do so.
3. Release of information to the public that is restricted or prohibited by law or by direction of the Sheriff. Virginia Code § 2.2-3714 states in a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

VI. RECORDS DISCLOSURE PROCEDURES AND COST

A. Letter of Request-- Requestors who wish documents, records and reports must fill out a letter of request form or present a written letter of request. The letter of request shall identify the requested records with reasonable specificity. No mention of the VFOIA is needed.

1. The VFOIA Officer may deem that a copy of single reports and other documents routinely distributed by this Office will not require a written letter of request.
2. The Letter of Request Form shall include a listing of fees to be charged by the public body for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The Requestor will be informed that payment will be expected at time of delivery of documents. Failure to pay will prevent requestor from being delivered a copy of requested documents. In any case where it is deemed in advance that charges for producing the requested records are likely to exceed \$200.00, the Sheriff's Office may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records.
3. Cost of Reproduction of Material. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.

a. Documents

- (1) 1 to 5 sheets: Cost \$.50 per sheet.
- (2) Insurance Report: Cost \$5.00 per report.
- (3) 6 plus sheets: Cost \$.50 per sheet - plus \$15.00 per hour of work by employee - minimum of \$10.00 for less than one hour.

NOTE: VICTIMS OF CRIMES AND/OR COMPLAINANTS (PERSON WHO REPORTED CRIME) WILL NOT BE CHARGED A FEE FOR THE VFOIA REPORT OR INSURANCE REPORT. PROPER IDENTIFICATION MAY BE REQUIRED BEFORE REPORT IS RELEASED.

b. Electronic Data/Storage

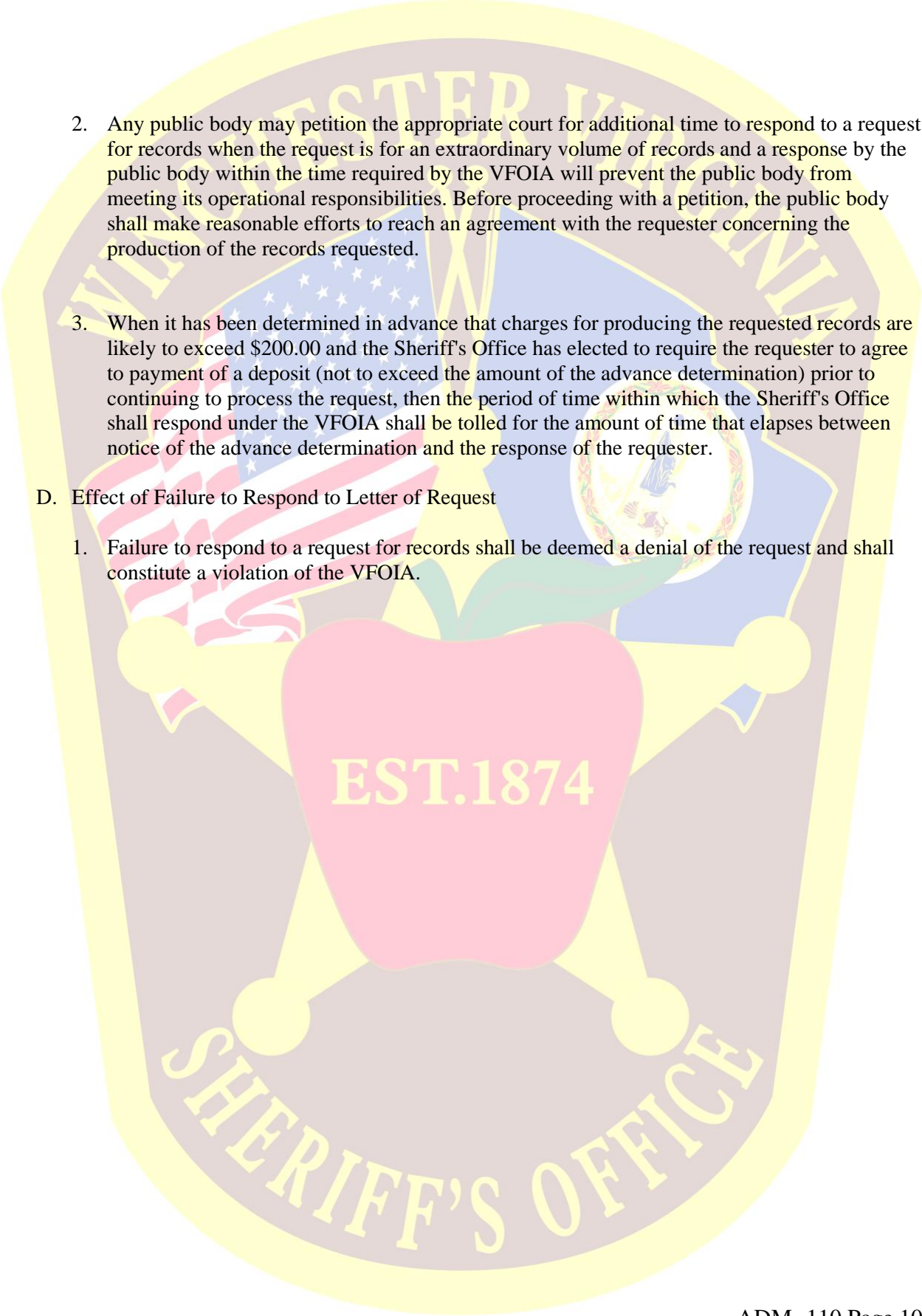
- (1) Paper Copy: Cost \$.50 per sheet - plus \$15.00 per hour of work by employee - minimum of \$10.00 for less than one hour.
- (2) Data Copy: Cost \$1.00 per disk - plus \$15.00 per hour of work by employee - minimum of \$10.00 for less than one hour.

B. Responses to Letter of Request-- Any public body which is subject to the VFOIA and which is the custodian of the requested records shall promptly, but in all cases within five (5) working days of receiving a request, make one of the following responses:

1. The requested records will be provided to the requester.
2. The requested records will be entirely withheld because law prohibits their release or the custodian has exercised his/her discretion to withhold the records in accordance with the VFOIA. Such response shall be (i) in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific state code section which authorizes the withholding of the records.
3. 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 accordance with the VFOIA. Such response shall (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall be in writing and specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven (7) workdays in which to provide one of the three preceding responses.

C. Extension of Time Period for Response to Letter of Request

1. As noted in paragraph 4 in the preceding section, where it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period and such response (i) is made in writing, (ii) specifies the conditions which make a response impossible, and (iii) complies with the above two requirements and is made within five working days, then the public body shall have an additional seven (7) work days in which to provide the requested records, withhold the requested records entirely (and document reason therefore), or provide requested records in part and withhold in part (and document reasons therefore).



2. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by the VFOIA will prevent the public body from meeting its operational responsibilities. Before proceeding with a petition, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

3. When it has been determined in advance that charges for producing the requested records are likely to exceed \$200.00 and the Sheriff's Office has elected to require the requester to agree to payment of a deposit (not to exceed the amount of the advance determination) prior to continuing to process the request, then the period of time within which the Sheriff's Office shall respond under the VFOIA shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

D. Effect of Failure to Respond to Letter of Request

1. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of the VFOIA.