

Sir:

I request a formal written opinion of the Freedom of Information Advisory Council regarding the actions of the University of Richmond police department as described in further detail below.

Questions Presented:

1. Is the University of Richmond police department a public body obligated by the Virginia Freedom of Information Act to respond to requests for public records?
2. Did the University of Richmond police department violate VFOIA when it refused to respond to my request for its policy manual?

Statement of Facts

The University of Richmond is a private institution of higher education located in Richmond, Virginia. It has established a police department under the authority of Virginia Code §23.1-810. The University of Richmond police department employs police officers who are employees of the university and are not employees of the Commonwealth or any of its political subdivisions.

On November 26, 2023, I sent an e-mail to the University of Richmond police department invoking the provisions of VFOIA and requesting a copy of its department policy manual. On December 11, the chief of police David McCoy responded, refusing my request and denying that the department is a public body within the meaning of VFOIA. A copy of this correspondence is included for your review.

Discussion

The Virginia Freedom of Information Act imposes its requirements only on "public bodies". These are generally defined to be governmental entities, but VFOIA contains the following provision in its definition of "public body":

For the purposes of the provisions of this chapter applicable to access to public records, [...] private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records. Virginia Code §2.2-3701, "Public body".

VFOIA incorporates by reference the definition of "private police department" found in Virginia Code §9.1-101:

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353¹, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or such entity's successor in interest, provided it complies with the requirements set forth herein. Virginia Code §9.1-101. "Private police department".

The University of Richmond police department seems to meet this definition. It employs private police officers and it's operated by the University of Richmond, a private entity authorized by statute—namely Virginia Code §23.1-810—to establish a police department.

Putting all of this together, it would seem that URPD is a public body for the purposes of VFOIA that pertain to access to public records, and that it is obligated to respond to a request for public records in accord with VFOIA's provisions.

Counterargument

The University of Richmond police department essentially argues that it's *not* a "private police department" within the meaning of VFOIA, but is instead a "campus police department", as detailed in this response:²

The Code of Virginia distinguishes between “private police departments,” which, as you correctly assert, are subject to the public records provisions of FOIA, and campus police departments, which are not subject to FOIA. I have attached a copy of chapter 224 of the 2015 Virginia Acts of Assembly, which added to the definition of “private police department” to Virginia Code §9.1-101. You will note that chapter 224 includes a list of private police departments in existence as of January 1, 2013 and neither URPD nor any other campus police department is included in the list.

URPD is a campus police department, authorized under Virginia Code § 23.1-817³.

Based on this purported distinction, URPD concludes that it is not a "public body" and that it is therefore not obligated to respond to requests for records under VFOIA.

¹ Virginia Code §56-353 authorizes railroad companies to appoint police agents, a provision that is of no relevance to the University of Richmond or to the questions presented.

² The quoted text is drawn from URPD's response to an earlier request for records. I've included it here to facilitate a more comprehensive analysis of its position.

³ This reference appears to be an error; the intended reference is likely §23.1-810. Virginia Code §23.1-817 imposes requirements for certain records of such departments to be disclosed.

Rebuttal

I find URPD's counterargument to be unavailing, for the following reasons.

First, the definition for "private police department" applies only⁴ to Chapter 1 of Title 9.1 and Chapter 23 of Title 19.2". Virginia Code §9.1-101. The fact that Title 23.1 uses the term "campus police department" to collectively refer to the departments of both public and private universities is irrelevant. The Code of Virginia doesn't actually "distinguish" between "private police departments" and "campus police departments" as argued. Rather, the Code uses different terms in different statutes to accomplish different policy objectives.

Second, the list of private police departments found in Chapter 224 of the 2015 Virginia Acts of Assembly does not purport to be a complete list of private police departments. Rather, that gives effect to the statutory requirement that a private police department be "authorized by statute or an act of assembly". The University of Richmond police department didn't need to be specifically authorized by Chapter 224, because its existence was already authorized by Virginia Code §23.1-810.

In my view, the University of Richmond police department is both a private police department as defined by §9.1-101 and a campus police department whose existence is authorized by §23.1-810. Because it's a private police department, it's also a public body for the purpose of a request for records under VFOIA.

I thank you for your attention to this matter. Should you require any clarification or additional information, please contact me using the information below.

Sincerely,

Aaron Stevenson

⁴ Of course, and as especially relevant here, the definition also applies to the Virginia Freedom of Information Act because it's incorporated by §2.2-3701.