



VIA TRANSIT POLICE DEPARTMENT

Standard Operating Procedures



Section 606 Police Records / Open Records Release

Office with Primary Responsibility:	COP	Effective Date:	November 29, 2019
Office(s) with Secondary Responsibilities:		Prior Revision Date:	August 5, 2019
Forms Referenced in Procedure:	None	Number of Pages:	7
		Related Procedures:	ALL

.01 INTRODUCTION

This procedure establishes a process for the accountability and responsibility of the release of records by the VIA Transit Police Department. This procedure protects the integrity of the Department and safeguards the rights of private citizens from unlawful intrusion.

.02 REQUESTS FOR OPEN RECORDS

- A. Written requests for police records, other than by subpoena or by a Department employee in his official capacity, should be forwarded immediately to the VIA Transit Police Department Investigator. The Department Investigator is designated as the Custodian of Records.
- B. Open records requests to VIA Metropolitan Transit come through VIA's Public Information Coordinator. VIA Transit Police Department Investigator will release all requested records to the Public Information Coordinator as soon as feasible along with requests for the withholding of the record and/or redactions from the records.
- C. Transit Police personnel who receive verbal requests for records should refer the requestor to the VIA Transit Police Department Investigator.

.03 SUBPOENAED RECORDS

- A. Transit Police personnel served with a subpoena duces tecum will, as soon as possible, forward the subpoena to the VIA Transit Police Department Investigator.
- B. When necessary, the VIA Transit Police Department Investigator Personnel will contact and consult with the VIA Legal Advisor's office and/or the VIA Custodian of Records.
- C. When the information sought by subpoena includes personnel records, as opposed to police records, all subpoenas will be forwarded by the VIA Transit Police Department Investigator to the VIA Legal office.
 1. The VIA Legal Office will determine the validity of the subpoena and will advise the Department regarding the release of the records sought.
 2. The assistance of the VIA Legal Office may include the filing of a motion to quash a subpoena.
- D. Personnel ordered by subpoena to produce police records are required to produce only those records in their actual or constructive possession. The VIA Legal Office should be consulted with regard to this issue if a question arises.

.04 AUTHORIZED USE OF RECORDS BY POLICE PERSONNEL

- A. Police records are stored electronically in the Crimestar RMS system. Crimestar is password protected and accessible only to authorized personnel.



VIA TRANSIT POLICE DEPARTMENT

Standard Operating Procedures



Section 606 Police Records / Open Records Release

- B. Officers may retain a copy or obtain a copy of their reports from the VIA Transit Police Department Investigator for incidents they were involved in during the official discharge of their duties, or that they are assigned to investigate.
- C. Officers may review criminal history checks and obtain mug shots of individuals they are investigating as part of their assigned duties as a VIA Transit Police Officer. Actual copies of the criminal histories, fingerprint cards, and supplemental reports are only available and handled by the VIA Transit Police Investigator
- D. Officers seeking to view an Investigative case file must obtain permission from the VIA Transit Police Investigator.
- E. Any personnel seeking access to a file for personal use shall be denied access and shall be referred to their immediate supervisor regarding their request.
- F. Personnel working off-duty as private investigators, consultants, professional witnesses, security officers, or in any other off-duty capacity shall not access departmental resources or records for use in the off-duty work capacity.

.05 AUTHORIZED USE OF RECORDS BY VIA PERSONNEL

- A. Personnel requesting records for their personal use are treated as open records requests and the request should be forwarded to the VIA Transit Police Department Investigator.
- B. Personnel obtaining records for their personal use may be asked to pay the required fee for the records.

.06 DEPARTMENT TEXT MESSAGE POLICY

- A. **General:** In accordance with rules and schedules established by the Texas State Library and Archives Commission regarding Local Governments, some text messages must be retained by the VIA Transit Police Department. (VTPD) Text messages that relate to Transit Police business can be subject to disclosure requirements pursuant to the Public Information Act, Chapter 552 of the Texas Government Code, even when said communication is sent or received on a privately owned device.
- B. **Purpose:** To address the use of text messaging for Transit Police business and the retention requirements of text messages relating to Transit Police business that are received or transmitted on VIA-owned or privately-owned cell phones and devices. This policy is intended to assure the Transit Police Departments compliance with records retention and disclosure requirements. The failure to follow this policy may expose the Transit Police Department and VIA Metropolitan Transit Authority to damages and attorney's fees under the Texas Public Information Act, and therefore failure to follow this policy may subject the employee to disciplinary actions as well as criminal penalties.
- C. **Definitions:**
 - 1. **VIA-owned cell phone or device:** means a cell phone or other device capable of sending or receiving text messages that is provided to an employee by VIA for the purposes of performing his or her job duties.
 - 2. **Transit Police business:** in relation to text messages means a text message sent or received by a Transit Police employee relating to the work of the employee or the business of the Transit Police. Transit Police business text messages include but are not limited to:
 - a. Text messages between employees discussing the employees' work or the business of the Transit Police Department. Some examples include:



VIA TRANSIT POLICE DEPARTMENT

Standard Operating Procedures



Section 606 Police Records / Open Records Release

- i. a text acknowledging an employee will be late for work;
 - ii. a text asking another employee to call to discuss Transit Police business;
 - iii. a text by a supervisor asking another employee to respond to a specific location;
 - iv. a text notifying a coworker that someone would like to talk;
 - v. a text notifying a coworker of a workplace injury; etc.
 - b. Text messages between an employee and a non-employee discussing a matter related to the employee's work or the business of the Transit Police Department. Some examples include:
 - i. a text with a vendor asking to increase an order of supplies;
 - ii. a text to a service provider advising it that its assistance is needed to fix a copy machine;
 - iii. a text between an employee and an attorney discussing an issue of Transit Police business; **if not privileged information**
 - iv. a text to a citizen or vendor setting a meeting; etc.
3. **Transit Police employee:** means any employee, commissioned or non-commissioned of the VIA Metropolitan Transit Police Department.
4. **Personal text message:** means a text message sent or received by a Transit Police employee that does not discuss a matter of Transit Police business. Examples include:
 - a) texts between employees, friends or family agreeing to meet for lunch, inviting another to an after-work function, or thanking another for a gift;
 - b) texts between parents and children, teachers or daycare providers;
 - c) text messages with doctors, dentists, auto repair or home repair providers; etc.
5. **Privately-owned cell phone or device:** means a cell phone or other device that is used by the employee in part to send or receive text messages related to Transit Police business, but is not owned by VIA Metropolitan Transit Authority
6. **Text or text message:** is a message that is composed and sent between two mobile phones or portable devices such as a computer or tablet.
7. **Transitory text:** means a text message that only documents information of temporary, short-term value, and that is not needed as evidence of a business transaction. Examples of transitory texts include without limitation:
 - a) Texts that set work meetings or request job-related phone calls.
 - b) Texts that are akin to voice mail messages.
 - c) Texts noting the sender has completed tasks (e.g. "I returned the call to Mary Smith," "I placed the report in your box," or "Interstate Highway 10 is back open.")
 - d) Texts informing a coworker/supervisor that the sender will be late to work, late to a meeting, is taking the day off, or other similar message.
 - e) Texts that ask another employee to take some form of routine administrative action (e.g. "Can you please take your vehicle to the bus yard," "I need you to meet me at the office," or "You are needed in court at 11:00 a.m.")
 - f) Texts that contain information that is later included in another Transit Police record. Examples include:
 - i. A text from a Sergeant to an Officer advising him or her to take an offense report. Once the offense report is prepared, the text becomes transitory.
 - ii. An officer sends a text to the Sergeant advising that numerous firearms were located inside a vehicle involved in an accident and will need to be secured at the police department. Once a vehicle inventory and property forms are completed, the text becomes transitory.



VIA TRANSIT POLICE DEPARTMENT Standard Operating Procedures



Section 606 Police Records / Open Records Release

8. **Exculpatory information:** includes what is commonly called “Brady Material” as well as information that must be disclosed under the Texas Code of Criminal Procedure, Article 39. “Brady Material” is evidence in the government’s possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a prosecution witness, including law enforcement officers.

D. Texts Regarding Transit Police Business ARE Public Records

1. Text messages regarding Transit Police business constitute public records under the Public Information Act. Whether a text must be retained for a set amount of time depends on whether it is transitory (transitory texts need not be retained once the matter it pertains to has been closed) or non-transitory (non-transitory texts must be retained pursuant to retention schedules published by the State). The required retention period for non-transitory text messages depends on the content of the message. The retention schedules for these messages may be found on the Texas State Library and Archives Commission website under “Local Government Retention Schedules”.
2. Texts that are required to be retained, or texts that exist on a cell phone at the time a public records request is received, may be subject to disclosure under the Public Information Act.
3. This requirement applies whether text messages regarding Transit Police business are sent or received on a VIA-owned or privately-owned cell phone or device.

E. VIA-Owned Cell phone or Device

1. VIA-owned cell phones or devices shall be used only for VIA business.
2. Employees have no right to privacy in a VIA-owned cell phones or devices. After receipt of a public records request, and upon request of the Transit Police, an employee will be required to provide his or her VIA-owned cell phone or device to the Transit Police Department for inspection, and all information on the cell phone or device is subject to review.
3. Personal text messages which do not relate to Transit Police business, are not public record, and need not be retained on a VIA-owned cell phone or device. However, the fact that personal texts are sent or received on a VIA-owned cell phone or device is a matter of public record.
4. If personal text messages exist on a VIA-owned cell phone or device at the time the Transit Police Department receives a public records request, those messages must be retained until the Transit Police Department responds to the request. The content of those personal text messages will be reviewed by The Transit Police Department or VIA staff in making a disclosure decision.

F. Privately Owned Cell Phone or Device

1. Privately owned cell phones and devices are the private property of Transit Police employees. Personal text messages which do not relate to VTPD business, are not a public record, and need not be retained on a privately-owned cell phone or device. However, text messages sent or received using a privately-owned cell phone or device that pertain to VTPD business are public records which may be subject to release under the Public Information Act.
2. While the Transit Police Department may not be permitted to inspect an employee’s privately-owned cell phone or device without the employee’s consent, an employee who uses his or her privately-owned cell phone or device to send or receive text messages related to Transit Police business is required to follow this policy



VIA TRANSIT POLICE DEPARTMENT

Standard Operating Procedures



Section 606 Police Records / Open Records Release

(with the exception of the previous section) and shall be required to produce, transcribe, or note in another document texts relating to Transit Police business in accordance with this policy.

3. Transit Police employees are also required to cooperate with the Transit Police Department and provide their fullest assistance in fulfilling the Transit Police Department duties and obligations under the Public Information Act. Failure to comply may result in disciplinary actions.

G. Transitory Texts and Non-transitory Texts

1. Text messages regarding Transit Police business are of two types:
 - a. transitory texts; and
 - b. non-transitory texts.
2. In accordance with this policy, transitory texts may be deleted by the user once the texts have served their purpose and the matter is closed. On the other hand, non-transitory texts may not be deleted from a cell phone or device until they have been produced, transcribed, or retained in some other manner.

H. Texting should be limited Transitory Texts

1. An employee should limit his or her texting regarding Transit Police business to transitory texts that can be deleted once the message serves its purpose and the matter is closed.
2. In the event communications that are more than transitory are necessary, such communications should occur in person, by telephone, by email, or by memorandum, but not by text.
3. Using this approach will avoid complications with archiving and producing texts for the purposes of responding to public records requests.

I. Transitory Texts

1. Delete Once No Longer Needed, Unless Public Records Request Received.
 - a. According to the Texas State Library and Archives Commission transitory texts are “not essential to the fulfillment of statutory obligations or to the documentation of government functions” and can be deleted after the matter is closed. Furthermore, the “disposal of transitory information need not be documented through destruction authorizations or in records disposition logs”.
 - b. In many cases, a transitory text may be deleted once it is sent or read by the receiver. Example:
 - i. An employee texts his supervisor that he will be late to a meeting. This text is transitory and serves its purpose once read by the supervisor. The text message may be deleted by the sender and receiver once it is read. In other cases, the transitory text may not be deleted immediately, but it may be deleted at a later time when it then becomes transitory.
 - ii. An employee sends a text to a supervisor advising the supervisor that she witnessed another employee at a local restaurant when the employee was supposed to be working. Assuming the supervisor would be investigating the incident, the supervisor would only be permitted to delete the text once the text was produced, transcribed, or noted in some other document or report. Once produced, transcribed, or noted in another document or report, the text message becomes transitory and may be deleted from the cellphone or device. Thus, if immediately after the incident, the supervisor sent an email to their supervisor, explaining the content of the text, the text could be deleted.
2. Transitory Texts May Not be deleted if there is a Public Records Request.



VIA TRANSIT POLICE DEPARTMENT Standard Operating Procedures



Section 606 Police Records / Open Records Release

- A. In the event a records request is submitted that may include within its scope text messages transmitted on either a VIA y-owned or a privately-owned cell phone or device, the employee, once put on notice of the request, shall not delete any text messages from the cell phone or device, even if such text is transitory or personal. In this case, the employee must work with the Open Records Coordinator for the Transit Police Department to produce the requested public records or other necessary response.
- B. In the event a records request is submitted that may include within its scope text messages transmitted on a privately-owned cell phone or device, the employee shall cause the text messages related to VTPD business to be produced in accordance with this policy, if the employee has not already done so. Additionally, the employee must describe the following to the Open Records Coordinator:
- i. A detailed description of the search method used to search the privately-owned cell phone or device for responsive public records.
 - ii. An indication of whether any responsive records were located.
 - iii. If no responsive records were found, an explanation of why (e.g., you only have text messages that post-date the time period requested because the texts were deleted before you received notice of the request, no text messages were sent to or received from the person identified in the request, no text messages exist on the cell phone or device that discuss the topic identified in the request, etc.)
 - iv. If records were found on the cell phone or device that are within the scope of the request but are personal to the employee and not related to Transit Police business, the employee must provide specific and detailed facts that support the personal nature of those texts (e.g., the texts are to or from the person identified in the request, but the texts pertain to personal medical appointments, private family matters, etc. and do not discuss Transit Police business). The employee should identify each text generically, including date, time, size, an indication of an attachment, etc.
 - v. If the text is to or from a Transit Police employee, a public official of another public agency or a VIA contractor, the employee shall identify the text message's sender or recipient by name. However, the employee need not identify family members, personal friends, or others by name.
 - vi. If requested by the VTPD Open Records Coordinator, the District Attorney's Office, or another authorized VIA representative, the employee may be required to provide additional information to support the personal nature of any text message.
- C. If responsive public records are found during the employee's search of his or her personal cell phone or device, the employee shall produce those public records as this policy provides. The employee may choose to comply with this policy by providing his or her privately owned cell phone or device to an authorized Transit Police employee or other VIA representative to conduct the necessary search.
- D. Nothing in this policy requires the employee to allow such an inspection, and no adverse action may be taken against an employee if he or she chooses not to produce his or her privately owned cell phone or device and instead complies as otherwise provided for within this policy.

Example: An employee texts his supervisor, on the supervisor's personal cell phone, that the employee will be late to a meeting. This text is transitory and serves its purpose once read by the supervisor. Assume the supervisor did not delete the text from his or her phone, and one week later, receives notice that a person has requested all emails and text messages that discuss or mention employees being late to meetings. In this case, even though transitory, since the record exists at the time the public records request is submitted, the supervisor may not delete the text. Rather, the supervisor must produce the text in accordance with this policy.



VIA TRANSIT POLICE DEPARTMENT Standard Operating Procedures



Section 606 Police Records / Open Records Release

J. Non-Transitory Texts

As noted above, employees should not send non-transitory texts relating to Transit Police business through a cell phone or device. Rather, an employee should limit his or her texting regarding Transit Police business to transitory texts that can be deleted once the message serves its purpose and the matter is closed. In the event a person sends or receives a non-transitory text, it shall be produced in accordance with this policy.

K. Reproducing Text Messages

1. When is the Employee Required to Produce a Text? There are three instances in which an employee is required to produce a text message:
 - a) When the text message is non-transitory and must be retained;
 - b) When a supervisor orders the employee to produce the text message; or
 - c) When the text message is maintained on a cell phone or device and the employee is notified of the existence of a public records request for the text message.
2. How is a Text Message Produced? When any of the above three requirements is met, the employee shall produce the text message by either of the following means:
 - a) Forwarding the text to a proper Transit Police Department email address; or
 - b) Taking screen shots of the text and emailing the screen shot to an appropriate Transit Police Department email address.
 - c) Utilizing a pre-approved application on a cell phone or devices that stores or disseminates the message to VIA-owned servers or networks.

L. Evidence in a Criminal Investigation

Employees should keep in mind that when sending or receiving a text message related to criminal investigations which may contain evidence or exculpatory information, regardless of whether the text message is transitory or non-transitory, the text message should be handled as any other evidence according to Transit Police Department policies.

M. Local Government Retention Schedules

1. Employees are encouraged to review and become familiar with the Local Government Retention Schedules published by the Texas State Library and Archives Commission.
2. Employees should use caution in classifying certain text messages as transitory that may be included in another record series requiring a specific retention period.