

What Legal Process Do I Need?

Remember:

In almost every case,
a ***Search Warrant*** can obtain the information you are seeking.

*(This chart presumes you cannot get the information
you are seeking through consent.)*

In order of least powerful to most powerful, the forms of legal process are:

Administrative Subpoenas: The Commonwealth's Attorney can issue an Admin Subpoena.

Grand Jury Subpoena: A Special or Multi-jurisdictional Grand Jury can issue a subpoena.

Court Orders: Only a Circuit Court Judge can issue a Court Order

Search Warrants: A Magistrate, General District Court Judge, or Circuit Court Judge can issue a Search Warrant.

Title III Wiretap: The Virginia Attorney General must participate to obtain this type of Circuit Court order.

<u>Info Sought</u>	<u>Minimum Paper Needed</u>	<u>Standard</u>	<u>Statute</u>
Subscriber info in an Abduction or Child Exploitation Case	Administrative Subpoena	Relevant to a legitimate law-enforcement investigation concerning violations of §§ 18.2-47, 18.2-48, 18.2-49, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-374.1, and 18.2-374.1:1, former § 18.2-374.1:2, and § 18.2-374.3	19.2-10.2(A)(1)
Subscriber Info	Court Order or Grand Jury Subpoena	Relevant and material to an ongoing investigation	19.2-70.3(A)
Incoming and outgoing contacts for a period of time in the past	Court Order or Grand Jury Subpoena	Relevant and material to an ongoing investigation	19.2-70.3(A)
Historical Location Data	Court Order or Grand Jury Subpoena	Relevant and material to an ongoing investigation	19.2-70.3(A) & 18 U.S.C. 2703(d)
Account logs, IP addresses, Internet sites accessed	Court Order or Grand Jury Subpoena	Relevant and material to an ongoing investigation	19.2-70.3(A) & 18 U.S.C. 2703(d)
Incoming and outgoing contacts for a limited period of time in the future	Court Order (“Pen Register”)	Relevant to an ongoing criminal investigation being conducted by that agency.	19.2-70.2
Emails, Text Messages, contents of communications in the past	Search Warrant	Probable Cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has	19.2-56

		committed or is committing a crime	
Historical Financial Records from Financial Institution, Credit Card, or Credit Reporting Service	Court Order	Relevant to a legitimate law-enforcement inquiry	19.2-10.1
Video Surveillance	Search Warrant	Probable Cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime	19.2-56
Account Records from <i>non</i> -financial institution that does <i>not</i> provide Electronic Communications Service	Search Warrant	Probable Cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime	19.2-56
Download of Communications and Data Contained in Device	Search Warrant	Probable Cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime	19.2-56
Real-time Location Data	Search Warrant	Probable Cause that the real-time location data sought is relevant to a crime that is being	19.2-70.3(C)

		committed or has been committed or that an arrest warrant exists for the person whose real-time location data is sought	
Real-time Communications (texts, calls, messages)	Title III Wiretap	Probable Cause (must include facts reflecting that other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to are too dangerous)	19.2-68
Live Audio Surveillance of Private Conversation (when no party consents to surveillance)	Title III Wiretap	Probable Cause (must include facts reflecting that other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to are too dangerous)	19.2-68