

Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of the Virginia Freedom of Information Advisory Council under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- You have the right to request to inspect **or** receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for records from the FOIA Council

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.

- From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of the FOIA Council, nor does it require the FOIA Council to create a record that does not exist.
- You may choose to receive electronic records in any format used by the FOIA Council in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from the FOIA Council, you may direct your request to Alan Gernhardt, Executive Director. He can be reached as follows:

By e-mail at foiacouncil@dls.virginia.gov

By phone at (804) 698-1810 or [toll free] 1-866-448-4100

By fax at (804) 698-1899

By mail at 900 E. Main Street, 10th Floor, Richmond, Virginia 23219.

You may also contact him with questions you have concerning requesting records from the FOIA Council. In addition, the FOIA Council is available to answer any questions you may have about FOIA.

[The FOIA Council's Responsibilities in Responding to Your Request](#)

- The FOIA Council must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the FOIA Council is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow the FOIA Council to require you to provide your name and legal address.
- FOIA requires that the FOIA Council make one of the following responses to your request within the five-day time period:
 - 1) We provide you with the records that you have requested in their entirety.
 - 2) We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
 - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
 - 4) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you want). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.
 - 5) If it is practically impossible for the FOIA Council to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Costs

- A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia.
- Charging policy: Generally, the FOIA Council chooses not to charge for routine requests, but reserves the right to charge as allowed under FOIA for unusually voluminous or time consuming requests. As a rule of thumb, any request that can be processed in one hour or less will be provided free of charge.
- You may have to pay for the records that you request from the FOIA Council. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, the FOIA Council may require payment of the past-due bill before it will respond to your new FOIA request.

Types of records

The following is a general description of the types of records held by the FOIA Council:

- Personnel records concerning employees and officials of the FOIA Council;

- Records of contracts into which the FOIA Council has entered;
- Records of informal advisory opinions rendered by telephone and email;
- Records of formal advisory opinions (which are also published on the FOIA Council website at <http://foiacouncil.dls.virginia.gov/>);
- Records of meetings of the FOIA Council and its subcommittees (which are also published on the FOIA Council website at <http://foiacouncil.dls.virginia.gov/>);
- Educational and reference materials about FOIA (which are also published on the FOIA Council website at <http://foiacouncil.dls.virginia.gov/>);
- Annual reports of the FOIA Council to the General Assembly (which are also published on the FOIA Council website at <http://foiacouncil.dls.virginia.gov/>).

If you are unsure whether the FOIA Council has the record(s) you seek, please contact Maria Everett or Alan Gernhardt using the contact information listed above.

Please note that the Council was created to issue opinions on the operation/application of the Freedom of Information Act (FOIA), to publish educational materials, and to provide training about FOIA. We are not a repository of any records, other than those created by this office. We do not have other public bodies' records.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The FOIA Council commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia);
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12));
- Subdivision 4 of § 30-179, regarding the powers and duties of the Council, which states as follows: "Request from any agency of state or local government such assistance, services and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency;"

Policy regarding the use of exemptions

- The general policy of the FOIA Council is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of the FOIA Council.
- The general policy of the FOIA Council is to invoke the contract negotiations exemption whenever it applies in order to protect the FOIA Council's bargaining position and negotiating strategy.
- The general policy of the FOIA Council is to invoke subdivision 4 of § 30-179 as appropriate when it applies.