

**FOIA AND LOCAL GOVERNMENT
OFFICIALS
RECORDS**

WHAT is a PUBLIC RECORD?

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.

All public records are open to the public UNLESS a specific exemption in law allows the record to be withheld.

WHAT about RETENTION of PUBLIC RECORDS?

Public records MUST be retained according to retention schedules set by the Library of Virginia. The length of retention depends on the content of the record. After expiration of the applicable retention period, the records may be destroyed or discarded.

E-MAILS

Emails that relate to the public business are public records, regardless whether you use your home or office computer.

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As such, these emails must be retained as required by the VA Public Records Act. For practical advice for email use, access and retention, see FOIA Council handout entitled "Email: Use, Access and Retention" available on the FOIA Council website.

Resources for FOIA Questions

VA Freedom of Information Advisory Council:

Maria J.K. Everett, Executive Director
Alan Gernhardt, Staff Attorney
Email: foiacouncil@dls.virginia.gov
Telephone (804) 225-3056
Toll-Free 1-866-448-4100
<http://foiacouncil.dls.virginia.gov>

Virginia Association of Counties:

Phyllis Errico, Legal Counsel
Email: perrico@vaco.org
Telephone: (804)343-2509
www.vaco.org

Virginia Municipal League:

Mark Flynn, Director of Legal Services
Email: mflynn@vml.org
Telephone: (804)523-8525
www.vml.org

Library of Virginia: (records management Q's)

John Metz, Director of Archives, Records, and Collections Services
Email: John.Metz@lva.virginia.gov
Telephone: (804)-692-3607
<http://www.lva.lib.va.us/whatwedo/records/index.htm>

**THE FREEDOM OF
INFORMATION ACT AND
LOCAL GOVERNMENT
OFFICIALS**



*Prepared by the Virginia Freedom of
Information Advisory Council
in cooperation with
the Virginia Association of Counties
and
the Virginia Municipal League*



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POLICY OF FOIA

By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Unless a public body or public official specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

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MEETING REQUIREMENTS

What is considered a MEETING under FOIA for board of supervisors or city or town council members?

ANY gathering, including work sessions, of the constituent membership, sitting (or through telephonic or video equipment pursuant to 2.2-3708.1) as:

- the board or council, or
- an informal assemblage of
 - (i) as many as three members, or
 - (ii) a quorum, if less than three, of the constituent membership,

WHEREVER the gathering is held;
WITH or WITHOUT minutes being taken;
AND
WHETHER OR NOT votes are cast.

NOTE: This also applies to ANY meeting, including work sessions, of any subgroup of the board or council.

WHAT IS NOT A MEETING?

- The gathering of employees; or
- The gathering or attendance of two or more board/council members at:
 - Any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance

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WHAT IS *NOT* A MEETING (cont'd) was not called or prearranged with any purpose of discussing or transacting any business; OR

- A public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to discuss or transact public business.

OTHER FOIA PROVISIONS

- **MINUTES: ARE REQUIRED** for any meeting of the board or council.
- Minutes are also required for any subcommittee thereof **ONLY** if a majority of the board/council members are on the subcommittee.
- **VOTING: NO secret or written ballots are ever allowed.**
- **POLLING:** You MAY contact individual members **separately** to ascertain their positions by phone, letter or email. **REMEMBER:** This exemption **CANNOT** be used in lieu of a meeting.
- **CLOSED MEETINGS:** Allowed **ONLY** as specifically authorized by FOIA and require motion stating purpose, Code cite *and* subject. [See § 2.2-3711 of FOIA]