

Access to Public Records

Virginia Freedom of Information Act

Virginia Freedom of Information Advisory Council

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Introduction to Records & FOIA

- All public records are presumed open unless specifically exempt.
- Definition of “public record” (§ 2.2-3701)
 - all writings and recordings that consist of letters, words or numbers, or their equivalent . . . 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.

Requesting Records

§ 2.2-3704

- Who can make a request?
 - Citizens of the Commonwealth
 - Representatives of newspapers & magazines with circulation in the Commonwealth
 - Representatives of radio & television stations broadcasting in or into the Commonwealth
- How to make a request
 - Reasonable specificity
 - Name & legal address

Responding to Requests

- Five working days to respond
- Five permissible responses to a request

Five Permissible Responses

1. Provide the requested records
2. Requested records are being entirely withheld
3. Requested records are being provided in part and withheld in part
4. Requested records could not be found or do not exist
5. Additional time needed to search for/produce records

How to Respond to a Request

- If any part of the answer is “no,” the response must:
 - Be in writing
 - Identify with reasonable particularity the subject matter of the withheld records; AND
 - Cite the specific section(s) of the Code of Virginia that authorizes the records to be withheld
- **NOTE:** if being entirely withheld, response must identify with reasonable particularity the volume of the withheld records

How to Respond to a Request

- If the records cannot be found or do not exist, the response must:
 - Be in writing, AND
 - If the public body knows that another public body has the records, it must provide contact information for the other public body.
- If the public body needs more time, the response must:
 - Be in writing, AND
 - Specify the conditions that make production of the records within the five-working-day period impossible.

Responding to Requests

- Five working days to respond
- Permissible responses to a request
- Creation of new records not required
- Charges for records

Charging for Records

- Reasonable charges for actual cost incurred in accessing, duplicating, supplying, or searching for requested records
 - Exclusion review allowed (*ATI v. UVA*, Va. Supreme Ct., 2014)
- Public body may request a deposit for charges in excess of \$200
 - Time period is tolled until deposit is paid
- Unpaid amounts for previous record requests

Electronic Records

- Format of records
- Use and retention of e-mail
 - Virginia Public Records Act, §§ 42.1-76, et seq.
 - Definition of “public record”
 - Tips for using and managing email

Exemptions of General Application

- Personnel records
- Working papers and correspondence
- Attorney-client privilege
- Legal memoranda and other work product
- Contract negotiation records
 - Procurement records
- Account & routing numbers

