

Responding To Requests from Out-Of-State

The Virginia Freedom of Information Act (FOIA) grants rights of access to public records to citizens of Virginia and media representatives that broadcast or have circulation in or into Virginia. FOIA does not grant rights to other requesters from out-of-state. This limitation was challenged by two out-of-state requesters (not media representatives) in the case of *McBurney v. Young*, which was decided by the Supreme Court of the United States on April 29, 2013 (case No. 12-17). The premise of the challenge was that the citizenship limitation in Virginia's FOIA violates the Privileges and Immunities Clause and the dormant Commerce Clause of the Constitution of the United States by discriminating against citizens from out-of-state. However, the Supreme Court held that the citizenship limitation in FOIA does not violate the Constitution. In light of this decision, the FOIA Council has received several inquiries about how to handle requests from out-of-state.

The advice of the FOIA Council remains the same as it was before this decision: we generally recommend treating out-of-state requesters as you would in-state requesters. Even though you are not legally required to do so, we recommend it for two reasons: (1) it provides for internal consistency in responding to requests, and (2) if you deny a request because the requester is not from Virginia, all the requester has to do is get a Virginia citizen to make the same request on his or her behalf. However, we do recognize that responding to out-of-state requests can be difficult in terms of collecting payment and in the amount of time involved, particularly because many out-of-state requests involve a large volume of records and/or search time. Because the procedural rules of FOIA are not mandatory when dealing with out-of-state requests, you may collect payment in advance (whereas with a Virginia or media requester you may only collect payment in advance if the charges are likely to exceed \$200), and you may respond in a reasonable time frame (rather than being held to the five working day limit to respond as you would with a Virginia or media requester).

If you have any questions, please do not hesitate to contact us.

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