

**Virginia Freedom of Information Act
Access to Public Records - Quick Reference**

FOIA = Democracy In Action

POLICY = Openness over secrecy

What is a public record?

Any type of record—electronic files, email, papers, letters, video or audio recordings, etc.—is a public record. If you are a public employee or public official and you have a record in the transaction of your public business, then it is a public record.

Exception: It is not a public record if it is not in the transaction of public business.

Examples of exceptions: Unsolicited advertisements received by mail or email, notes from your spouse, invitations from a friend or family member to a party or other social event, personal utility bills, and other records not in the transaction of public business are not public records.

Who has access rights under Virginia FOIA?

Citizens of Virginia and media representatives that broadcast or have circulation in Virginia all have access rights. However, anyone can get a Virginia citizen to make a request on his or her behalf, so we recommend responding to all requesters.

How long do I have to respond to a request? Five (5) working days (do not count weekends or legal holidays).

What responses are allowed under FOIA?

Any one of the following five responses are allowed:

- **YES:** Provide the records to the requester.
- **NO:** Withhold the entire record (may only do so if the entire record is exempt). Must identify the subject matter and volume of records being withheld and cite the applicable exemption(s) in writing.
- **YES and NO:** Withhold portions of the record that are exempt but provide the rest. Must identify the subject matter of the records being withheld and cite the applicable exemption(s) in writing.
- **DO NOT HAVE IT:** Tell the requester in writing that the record cannot be found or does not exist. If you know that another public body has the record, provide contact information.
- **NEED MORE TIME:** Tell the requester in writing you are invoking your right to seven (7) additional working days to respond. If the request is for criminal investigative files pursuant to § 2.2-3706.1, you may invoke your right to 60 working days to respond. If that is not enough time, work out a deal with the requester. If you cannot reach a deal, you may petition a court for more time.

CHARGES - Do you have to provide the records for free?

NO: You may charge, but charges must be **reasonable** and may not exceed **actual** costs for searching for, accessing, duplicating, and supplying the requested records (which includes exclusion review). You must make all reasonable efforts to supply the requested records at the lowest possible cost.

Notice: You must **notify the requester** in writing of your right to charge and their right to a cost estimate before searching for the records. You may not charge for maintenance costs or other general expenses.

What is a "reasonable" charge? Only a court can rule on what is reasonable.

Estimates: You must provide an estimate in advance if the requester asks for one.

Advance deposits: You may collect an advance deposit if the estimated charges will exceed \$200.

Tolling: When you provide an estimate or ask for an advance deposit, the time to respond is tolled until the requester responds to the estimate or pays the deposit, respectively.

Specific Questions? Call or email the FOIA Council:

804-698-1810

1-866-448-4100

foiacouncil@dls.virginia.gov

The Virginia Freedom of Information Advisory Council was created to issue opinions on the operation and 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.