

**SB 324 Workgroup Studying Charges
under the Virginia Freedom of Information Act**

Best Practices for Making Requests for Public Records

(Format: This guide will be published as a standalone best practices guide w/ references added to existing guides such as Access to Public Records and Charges. Other entities such as VML, VACo, and VSBA have been asked by the workgroup to share this guide with their members once it is published.)

Executive Summary: This guidance document is designed to provide practical tips for requesters and public bodies in making and responding to FOIA requests. It is set up in the same order as the request process, starting with research beforehand, then making the request, tips on phrasing the request itself, and addressing negotiations and follow-up between the requester and public body pursuant to FOIA's policy that "[a]ll public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested."

I. Preliminary research and first contact

Before you make your request:

- Each public body generally maintains its own records and there is no central repository or distribution point for all public records in Virginia, so you will need to ask the right public body to get the records you want.
- Think about what public body is the most likely to have the records and what the records are most likely to be called. However, be prepared for different public bodies to use different terminology for records that may serve the same purpose.
- Review the records [retention schedules](#) on the Library of Virginia's website for ideas.
- Check public bodies' websites if you are not sure what they do or what records they have, and look online to see if the information you want is already posted somewhere.
- Familiarize yourself with the procedures in 2.2-3704.
- Locate the public body's FOIA contact on the website and/or call to ask. Resources: The FOIA Council maintains a [list of FOIA officers](#) on its website, and each public body is required to publish a statement of FOIA rights and responsibilities as well as contact information for their FOIA officer(s).

II. Making the request

General tips:

- You can ask for records verbally, but we recommend writing out your request so that you and the government are literally on the same page. Additionally, writing is recourse if there are questions or disagreements about the request later.

- Be respectful.
- Be direct and clear.
- Avoid getting personal, editorial or adversarial.
- Ask for records, not answers to questions or explanations - FOIA only requires the production of records that already exist.
- Do not assume that one public body does things the same way as another public body. Even if you are familiar with the way one public body handles requests, it may be different at another public body due to different resources such as filing systems, software programs, and staff, along with different roles and functions carried out by different public bodies.

The request itself

- Reduce the number of search terms, the length of time frames and the number of people involved to the extent possible. A more precise request will save time and money for everyone involved.
- Use Boolean search terms when possible (e.g., “zoning application AND denied” or “zoning application AND residential NOT industrial”).
- Avoid terms like “any and all” or “included but not limited to,” which can broaden the scope of the request beyond what you really want. The statutory requirement is for a request to identify the records with "reasonable specificity," so you do not want to use open-ended terms that are not specific.
- Similarly, avoid terms that may be open to interpretation, such as “related to” or “associated with,” as these terms may also lack specificity because their scope may vary depending on their interpretation and application in different situations and by different people.
- TIP: If you are trying to phrase a request broadly because you are unsure of what records or how many records the public body has, or how it keeps and maintains its records, and you do not want to miss any records that may be important to your request, it is better to contact the public body in advance to discuss the request as described above rather than to use open-ended or subjective terminology in the request itself.

These three items are aimed at reducing the number of potential records your search will yield in order to save time and money. Though a narrowed search might miss some records you want, you can make follow-up requests that are based on what you learned in the initial response.

Note: Keep in mind that the default rule of FOIA is that all public records must be produced unless they are specifically exempted from disclosure or prohibited from release. Broad search terms such as those often used in discovery requests during litigation often end up being unproductive when used as FOIA requests because they simply return too many results.

III. Negotiating on the terms of production

Remember: public bodies and requesters are always encouraged to negotiate and reach agreements on the production of records, so clear communications are beneficial to all involved.

FOIA policy: "All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested." (§ 2.2-3700 (B).)

Negotiating when a record does not already exist: "Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body." (§ 2.2-3704 (D).)

Negotiating format of electronic records: "No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs." (§ 2.2-3704 (G).)

Some specific items to consider when negotiating:

- volume of records to be searched
- time frame covered by request
- time frame of response and costs to be charged (as points of negotiation rather than statutory limits, such as allowing a public body additional time to respond in exchange for reduced costs)
- subject matter of request
- key word searches
- limiting request based on involvement of specified individuals (as authors, senders, recipients, or otherwise)

After the request

- Work with the FOIA officer to get what you need.
- Be flexible, offer alternatives and be willing to negotiate if it will help you get what you need.
- Repeat requests: Sometimes requesters make the same request multiple times because new records are continually generated and even though the request is the same, the response will be different. Other times the records have not changed and the requester simply needs to inspect them again or get another copy (for example, if the requester got records that were subsequently lost or destroyed but then needed them again later). However, if a requester is making the same request repeatedly just to check for updates or new records that may or may not exist, we recommend that the requester and public body communicate first about whether there actually are any new records to be produced. Otherwise the public body may end up repeatedly producing the same records, which may result in wasted time and money for all involved.

