

Relevant Law from Other States

Colorado

2010 Law:

§ 24-72-205 (3). Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

Current Law: Unchanged

Staff Note: While Colorado law (CORA) may not have substantively changed from 2010, cursory research uncovered a policy from the Colorado Department of State. Unfortunately, no statutory citation or case law authority is included in the policy. The policy states, in relevant part:

“Abusive or Harassing Requests

Finally, while the Department is required to make a reasonable, good faith effort to respond to CORA requests within the guidelines of the statute, the Department is not required to respond to harassing or abusive communications.”

Connecticut

2010 Law:

§ 1-241. (Formerly Sec. 1-211); **Conn. Gen. Stat. 1-206(b)(2), and (d).** Injunctive relief from frivolous, unreasonable or harassing freedom of information appeals. A public agency, as defined in subdivision (1) of section 1-200, may bring an action to the Superior Court against any person who was denied leave by the Freedom of Information

Current Law: See Below

CGS 1-206(b)(5) Sec. 1-206. (Formerly Sec. 1-21i). Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Petition for relief from vexatious requester. Service of process upon commission. Frivolous appeals. Appeal re state hazardous waste program records

Commission to have his appeal heard by the commission under subsection (b) of section 1-206 because the commission determined and found that such appeal or the underlying request would perpetrate an injustice or would constitute an abuse of the commission's administrative process. The action authorized under this section shall be limited to an injunction prohibiting such person from bringing any further appeal to the commission which would perpetrate an injustice or would constitute an abuse of the commission's administrative process. If, after such an injunction is ordered, the person subject to the injunction brings a further appeal to the Freedom of Information Commission and the commission determines that such appeal would perpetrate an injustice or would constitute an abuse of the commission's administrative process, such person shall be conclusively deemed to have violated the injunction and such agency may seek further injunctive and equitable relief, damages, attorney's fees and costs, as the court may order.

See also Conn. Gen. Stat. 1-206(b)(2)

...If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's

(5) Notwithstanding any provision of this subsection, a public agency may petition the commission for relief from a requester that the public agency alleges is a vexatious requester. Such petition shall be sworn under penalty of false statement, as provided in section 53a-157b, and shall detail the conduct which the agency alleges demonstrates a vexatious history of requests, including, but not limited to: (A) The number of requests filed and the total number of pending requests; (B) the scope of the requests; (C) the nature, content, language or subject matter of the requests; (D) the nature, content, language or subject matter of other oral and written communications to the agency from the requester; and (E) a pattern of conduct that amounts to an abuse of the right to access information under the Freedom of Information Act or an interference with the operation of the agency. Upon receipt of such petition, the executive director of the commission shall review the petition and determine whether it warrants a hearing. If the executive director determines that a hearing is not warranted, the executive director shall recommend that the commission deny the petition without a hearing. The commission shall vote at its next regular meeting after such recommendation to accept or reject such recommendation and, after such meeting, shall issue a written explanation of the reasons for such acceptance or rejection. If the executive director determines that a hearing is warranted, the commission shall serve upon all parties, by certified or registered mail or electronic transmission, a copy of such petition together with any other notice or order of the commission. The commission shall, after due notice to the parties, hear and either grant or deny the petition within one year after its filing. Upon a grant of such petition, the commission may provide appropriate relief commensurate with the vexatious conduct, including, but not limited to, an order that the agency need not comply with future requests from the vexatious requester for a specified period of time, but not to exceed one year. Any party aggrieved by the

jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process.

and Conn. Gen. Stat. 1-206(d)

...If the court finds that any appeal taken pursuant to this section or § 4-183 is frivolous or taken solely for the purpose of delay, it shall order the party responsible therefor to pay to the party injured by such frivolous or dilatory appeal costs or attorney's fees of not more than one thousand dollars. Such order shall be in addition to any other remedy or disciplinary action required or permitted by statute or by rules of court.

commission's granting of such petition may apply to the superior court for the judicial district of New Britain, within fifteen days of the commission meeting at which such petition was granted, for an order reversing the commission's decision.

Staff Note:

After being contacted by staff, the Connecticut Freedom of Information Commission sent this response: "The strongest relief the Commission can grant is an order that the agency need not complete with future requests from the requester for a period of up to one year."

Illinois

2010 Law:

§ 5 ILCS 140/3(g)

(g) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body

**Current Law: Original section unchanged;
new section added relating to;
Recurrent requesters.**

§ 5 ILCS 140/3(g): Unchanged

§ 5 ILCS 140/3.2

Sec. 3.2.

and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information. Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision.

Recurrent requesters.

(a) Notwithstanding any provision of this Act to the contrary, a public body shall respond to a request from a recurrent requester, as defined in subsection (g) of Section 2, within 21 business days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

(b) Within 5 business days after receiving a request from a recurrent requester, as defined in subsection (g) of Section 2, the public body shall notify the requester (i) that the public body is treating the request as a request under subsection (g) of Section 2, (ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section.

(c) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request.

Kansas

2010 Law:

Current Law: Unchanged

§ 45-218(e). The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

Staff Note:

Research revealed one Attorney General Opinion from 1998 but no appellate decisions addressing this issue.

Kentucky

2010 Law:

Current Law: Unchanged

§ 61.872(6). If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Tennessee

2010 Law:

Current Law: Unknown; pending response from the Office of Open Records Counsel

§ 6 of Public Chapter 1179, Acts of 2008 (“Public Chapter 1179”) adds **T.C.A. Section 8-4-604(a)(2)**. Policy Related To Reasonable Charges A Records Custodian May Charge For Frequent And Multiple Requests For Public Records. Requires the Office of Open Records Counsel (“OORC”) to establish a separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-503 et seq.)(“TPRA”). This Policy will be reviewed at least annually by the OORC. This Policy is to be used in connection with the Schedule of Reasonable Charges dated October 1, 2008. This Policy should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. However, if the records custodian does determine to impose charges for copies or duplication, this Policy permits the records custodian to calculate labor charges differently for frequent and multiple requests. If a records custodian determines to charge for frequent and multiple requests for copies or duplication of public records in accordance with this Policy, such determination and charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity’s governing authority. The authority shall specify the level of aggregation (whether by agency, entity, department, office or otherwise); however, such level of aggregation, as well as excessive fees and other rules shall not be used to hinder access to non-exempt public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity’s properly adopted written policy. The Schedule of Reasonable Charges provides that a records custodian may assess a requestor a fee for any labor reasonably necessary to produce copies of requested records after the records custodian spends one (1) hour (or if the records custodian establishes a threshold higher than one (1) hours, any increment of time over that higher threshold) producing the requested records. For purposes of this policy, during each calendar month records custodians in any department, division, agency, bureau, board, commission or other separate unit of state, county, or municipal government as authorized by the appropriate governing authority may aggregate the number of requests for copies made per requestor. When the total number of requests made by a requestor within a calendar month exceeds 4, a records custodian may begin to charge the requestor a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, are exempt from this policy. A records custodian may adopt a labor threshold higher than one (1) hour or a threshold higher than four (4) requests per calendar month for purposes of aggregation. Disputes as to aggregation shall be brought to the Office of Open Records Counsel. Additionally, a records custodian may aggregate the total number of public records requests made by a

requestor and by any other individual, if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. A records custodian choosing to aggregate requests by multiple requestors must inform the requestors of the determination to aggregate and that they have the right to appeal the decision to aggregate to the Office of Open Records Counsel. When aggregating the labor of multiple requestors, the records custodian must file a Notice of Aggregation of Multiple Requestors with the Office of Open Records Counsel. This form is available on the Office's website.

Texas

2010 Law:

Current Law: Unchanged

§ 52.232. Responding To Repetitious Or Redundant Requests.

A governmental body that determines that a requestor has made a request for information for which the governmental body has previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F, shall respond to the request, in relation to the information for which copies have been already furnished or made available, in accordance with this section, except that: (1) this section does not prohibit the governmental body from furnishing the information or making the information available to the requestor again in accordance with the request; and (2) the governmental body is not required to comply with this section in relation to information that the governmental body simply furnishes or makes available to the requestor again in accordance with the request. (b) The governmental body shall certify to the requestor that copies of all or part of the requested information, as applicable, were previously furnished to the requestor or made available to the requestor on payment of applicable charges under Subchapter F. The certification must include: (1) a description of the information for which copies have been previously furnished or made available to the requestor; (2) the date that the governmental body received the requestor's original request for that information; (3) the date that the governmental body previously furnished copies of or made available copies of the information to the requestor; (4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and (5) the name, title, and signature of the officer for public information or the officer's agent making the certification. (c) A charge may not be imposed for making and furnishing a certification required under Subsection (b). (d) This section does not apply to information for which the governmental body has not previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F. A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or

made available or because the information did not yet exist at the time of an earlier request, shall be treated in the same manner as any other request for information under this chapter.

Staff Note: The Texas municipal league in a 2023 memo wrote the following:

What is a vexatious requestor and what options does a city have to deal with one? A vexatious requestor is a person who abuses the Public Information Act (PIA) by sending frequent and/or voluminous PIA requests to a city, especially a small city, to disrupt the operations of city business.

What can a city do to deal with redundant or repetitive PIA requests? If a city receives a redundant or repetitive PIA request from the same requestor for information that has already been provided, Section 552.232 allows the city to send a letter to the requestor explaining:

(1) that the information was already provided, (2) when that information was provided, and (3) that no new information has been generated by the city since the last request.

How can a city deal with vexatious requestors who ask for voluminous amounts of information?

Section 552.275 allows a city to establish, by ordinance, a reasonable monthly or annual time limit on the amount of personnel time spent to produce a PIA request for inspection or to prepare copies for a requestor.

Utah

2010 Law:

§ 63G-2-201(8)(a)(iv) and (8)(b)(i)-(ii)

(8) (a) In response to a request, a governmental entity is not required to: ... (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or (b) Upon request, a governmental entity may provide a record in a particular form under Subsection

Current Law: See Below

Utah Title 63G-2-201(7)(a)(vi):

"In response to a request, a governmental entity is not required ... to fulfill a person's records request if the person has been determined to be a vexatious requester."

63G-2-209. Vexatious requester.

(8)(a)(ii) or (iii) if: (i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and (ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with § 63G-2-203.

(1) As used in this section:

(a) "Director" means the director of the Government Records Office, created in Section 63A-12-202.

(b) "Respondent" means a person that a governmental entity claims is a vexatious requester under this section.

(2)

(a) A governmental entity may file a petition with the director to request relief from a person that the governmental entity claims is a vexatious requester.

In determining whether a governmental entity has demonstrated that the respondent is a vexatious requester, the director shall consider:

(a) as applicable:

(i) the number of requests the respondent has submitted to the governmental entity, including the number of pending record requests;

(ii) the scope, nature, content, language, and subject matter of record requests the respondent has submitted to the governmental entity;

(iii) the nature, content, language, and subject matter of any communications to the governmental entity related to a record request of the respondent; and

(iv) any pattern of conduct that the director determines to constitute:

(A) an abuse of the right of access to information under this chapter; or

(B) substantial interference with the operations of the governmental entity; and

(b) any other factor the director considers relevant.

Hawaii

2010 Law:

In May 2010, Hawaii enacted a "vexatious request" law that authorizes governmental entities to ignore multiple identical or substantially similar requests. This was in response to the overwhelming number of requests for President Obama's birth certificate.

Current Law: "Vexatious request" law repealed; § 92F-11 Unchanged

"Vexatious request" law repealed 2014.

§ 92F-11 Affirmative agency disclosure responsibilities.

- (a) All government records are open to public inspection unless access is restricted or closed by law.
- (b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.
- (c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.
- (d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.
- (e) The office of information practices may adopt rules, pursuant to chapter 91, to protect agency records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of agencies' other lawful responsibilities and functions

Relevant Case Law

Most recently, in *VITA v. Turner*, the Richmond Circuit Court (2018) dismissed Mr. Turner's petition with prejudice. The court prohibited Mr. Turner from seeking records from the judiciary and entered an order based on an interpleader, restraining his ability to "petition for a Writ of Mandamus or Injunction against the Executive Secretary or the Virginia Information Technologies Agency under VFOIA." Similar to the cases mentioned below, these sanctions relate to FOIA rather than being imposed under FOIA itself, highlighting the current lack of relevant case law on this issue.

2010 Case Law

Language from original 2010 study:

There do not appear to be any reported cases or published opinions specifically addressing this issue under Virginia FOIA. As a general rule, a requester cannot violate FOIA by making requests.

Although FOIA does not have any provisions concerning harassment, other laws outside FOIA do address harassment in various contexts, and provide for both civil remedies, and in some cases, criminal penalties. Only two reported cases applied such a law in the context of FOIA and harassment. In *Davis v. Allen*, 44 Va. Cir. 237 (1997), the Richmond Circuit Court sanctioned a requester for filing multiple petitions for mandamus that the court found violated § 8.01-271.1. That Code section addresses the duty of an attorney or *pro se* litigant to sign papers filed with the court. It appears that the petitioner had made over 40 requests to various state agencies, and had filed five prior petitions for mandamus with the courts. All of the prior petitions addressed the same issue, and all had been dismissed. In addressing the sixth petition concerning the same issue, the court stated that it was "frivolous, not well grounded in fact or law, not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and filed for an improper purpose, that is, to harass the respondent and other government officials." The court also found that "in light of the numerous rejections of petitioner's prior, identical petitions by various courts and judges of the Commonwealth, it is obvious that his continued invocation of the same cause of action is merely for the purpose of harassing and annoying the respondent." The court then imposed a sanction of \$1,500 against the petitioner. While this case serves as an example of a sanction filed for harassment related to FOIA, keep in mind that the sanctions were imposed for violating § 8.01-271.1, not for making multiple FOIA requests.

The other case, *Chester et al v. Shrewsbury*, Circuit Court of Augusta County, VA (December, 2009), an issue before the court was the filing a FOIA mandamus petition. In this case the petitioner filed the mandamus action before the statutory five-working day period for response required by FOIA had run. The court found on this issue that the only sanction it could impose was "its strong expression of disapproval of Mr. Chester's misuse of the legal process before he had a legitimate suit to file."