

FOIA Modernization Research Memorandum

Background:

Sweden established a legal right to government documents in 1766.¹ This is the oldest FOI legal regime in operation today. A few other states began to adopt similar laws in the 20th century following the United Nations' embrace of a universal right to information in 1948.² As of June 2026, 139 member states have adopted some form of constitutional or statutory right for public access to information.³ Although most nations have a legal right to information in the books, many issues arise in practice. That said, there are quite a few examples that the Commonwealth of Virginia can look to for innovative solutions.

Scope of FOIA in the Commonwealth:

Currently Virginia's FOIA law only applies to "public bodies" as defined in § 2.2-3701. Some countries include court systems as well as private entities that receive public funding. FOIA applies to some records held by courts and to private entities that are funded "wholly or principally by public funds." In addition, there are many entity-specific exceptions to FOIA, including the State Corporation Commission (due to its classification) and the State Crime Commission (due to sensitivity of information). Subsection A of § 2.2-3704 requires public records to be available to, "...citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records."

Summary of Findings:

Research into innovative fee structures covered data from other states and countries around the world. It does not appear that any innovative structures are being employed past the fee-per-request model. However, areas of innovation include increased usage of digital solutions as well as proactive publication of materials. Some of Virginia's public bodies have begun experimenting with both of these approaches.

Fees:

Virginia's FOIA law currently allows entities to charge for the time it takes to produce the requested documents. The rate which an entity can charge is set to the "actual cost" of production but some agencies have set flat hourly rates for production.

Some governments have sought to remove fees altogether except for rare cases in which they are necessary to facilitate the request. Beyond the removal of fees, research did not uncover any novel fee structures beyond the fee per request model. The most innovative methods for decreasing costs on public bodies are making records digital by default and proactive publication.

¹ World Press Freedom, "Where Do Freedom of Information Laws Exist?" Published May 3, 2019. Source: <https://www.statista.com/chart/17879/global-freedom-of-information-laws/?srsltid=AfmBOoq52TqxW3JzHHZFk-ChtlrAI5xqPkqLIPMTF-C5C3guCNtFnhdY>.

² Universal Declaration of Human Rights, Article 19. Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³ UNESCO, "Access to Information Laws" Source: <https://www.unesco.org/en/access-information-laws>

Proactive Publication:

This is a practice in which public bodies publish certain information regardless of whether a FOIA request was received. It is often focused on content that is highly requested due to its public utility. This is an area which has seen increased attention. Supporters of proactive publication contend that it helps requesters by making their would-be requests readily available without the need to utilize the FOIA process. They also contend that it helps public bodies decrease costs as they can ensure that certain categories of information are published automatically, saving the need to navigate requests for those records.

The European Union's Commission Implementing Regulation 2023/138 established 6 categories as having high social and economic potential and as such are to be published by states proactively in a machine-readable format. These categories are geospatial, earth observation and environment, meteorological, statistics, companies and company ownership, and mobility. The Commission states that the availability of certain high-value datasets builds on its FAIR (findability, accessibility, interoperability, and reusability) principles.

Digital Platforms:

Another way in which public bodies can decrease the cost of FOIA is through adoption and use of digital platforms.

Quite a few Virginia localities have begun exploring digital solutions:

- **Newport News** has a FOIA Request Archive that publishes information requested by FOIA for other members of the public to access. The city also maintains an Open Data portal that proactively publishes data that the city expects to be requested in the future.
- **Richmond** has recently created its own FOIA library hosted by JustFOIA.
- **JustFOIA** seems to be a popular company for Virginia municipalities to use. Blacksburg, Norfolk, and Suffolk also use JustFOIA.⁴

In addition, other types of public bodies use the NextRequest platform to manage their FOIA requests. This includes the Department of Health, the Department of Environmental Quality, the Office of the Governor, and more.

⁴ Blacksburg: <https://www.blacksburg.gov/Home/Components/News/News/10916/>; Norfolk: <https://norfolk.justfoia.com/publicportal/home/newrequest>.