

# FOIA BASICS & SPECIAL ISSUES

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VIRGINIA COALITION FOR OPEN GOVERNMENT  
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TIDEWATER COMMUNITY COLLEGE - CHESAPEAKE CAMPUS

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## FOIA'S POLICY

"The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government."

"The provisions of this chapter shall be liberally construed to promote an increased awareness ... of government activities."

"Any exemption ... shall be narrowly construed."

"...shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens."

[§ 2.2-3700](#)

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## REMEMBER YOUR TWO HATS: CITIZEN & EMPLOYEE OF THE GOVERNMENT



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### DEFINITIONS

- Public Body**  
This is "any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth" supported "wholly or principally by public funds."
- Public Record**  
These are "prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business."
- Personal Record**  
These don't have to do with the transaction of public business

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### FOIA REQUEST SEQUENCE

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graph LR
    A[1. The public makes a FOIA request] --> B[2. The government internally decides how to proceed]
    B --> C[3. The public gets an answer to its FOIA request]
  
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### 1. THE PUBLIC'S REQUEST

- Record(s) must be described with "reasonable specificity"
- No duty to put it in writing
- No duty to narrow the request
- No duty to say "FOIA"
- No duty to say why the record is sought

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**THE PUBLIC'S REQUEST:  
MYTHS, REALITY & INTERPRETATION**

Does FOIA apply to requests for information or answers?

Is there such a thing as a formal vs. informal request?

Do I have to follow Virginia FOIA if the request is from a citizen of another state?

Do I have to follow Virginia FOIA if the request is from The Washington Post?

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**THE PUBLIC'S REQUEST:  
MYTHS, REALITY & INTERPRETATION**

Does FOIA apply only to requests for copies of records?

Does a FOIA request have to be in writing?

Can a requester be asked why he wants the records or what he'll do with them?

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**2. INTERNAL (WITHIN THE OFFICE) PROCESSING:**

The role of the FOIA officer

Workflow

Rates and fees

Sample responses

Who can/must/should be involved

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### INTERNAL PROCESSING: FEES

Actual cost • Reasonable • Discretionary

Deposit • Estimate • Billing

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### THE OPTICS OF FEES

Staff Time:	45 minutes @ \$22 per hour	= \$16.50
Copies:	3 @ .15 per page	= \$.45
Tax on copies:		= \$.03
Total:		= \$16.98

FOIA Council: [Taking the Shock Out of FOIA Charges](#)

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### INTERNAL PROCESSING: MYTHS, REALITY & INTERPRETATION

Does a FOIA request have to be in writing?

Can we impose a service charge for each request?

Do I have to provide a breakdown of how the fee was calculated?

What do we do while we wait for the requester's OK to proceed?

Can I ask the requester for a different timeline to fill her request?

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### 3. RESPONSES & EXEMPTIONS



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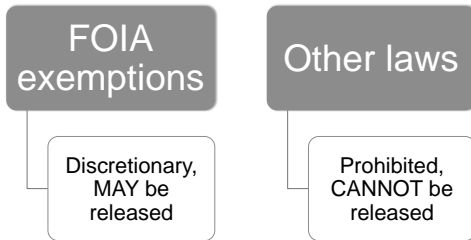
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### EXEMPTIONS VS. OTHER LAWS



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### EXEMPTION CATEGORIES

- § 2.2-3705.1 records applicable to all public bodies
- § 2.2-3705.2 records relating to public safety
- § 2.2-3705.3 records relating to administrative investigations
- § 2.2-3705.4 educational records, educational institutions
- § 2.2-3705.5 health and social services records
- § 2.2-3705.6 proprietary records and trade secrets
- § 2.2-3705.7 records of specific public bodies and certain other limited exclusions
- § 2.2-3706 law enforcement

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### MOST COMMON EXEMPTIONS\*

- PERSONNEL: 2.2-3705.1(1) LEGAL ADVICE & WORK
- PRODUCT: 2.2-3705.1(2)-(3)
- CONTRACT NEGOTIATIONS: 2.2-3705.1(12)
- SECURITY OF BUILDINGS: 2.2-3705.2(2)
- SCHOLASTIC RECORDS: 2.2-3705.4(1)
- ECONOMIC DEVELOPMENT: 2.2-3705.6(3)
- WORKING PAPERS: 2.2-3705.7(2)
- CRIMINAL INVESTIGATIONS: 2.2-3706(A)(2)(a)

\* In my experience. This will certainly vary from office to office.

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### UNCOMFORTABLE BUT TRUE



**There is no catch-all exemption for privacy**

- specific exemptions
- SSNs
- other laws
- law enforcement non-criminal records

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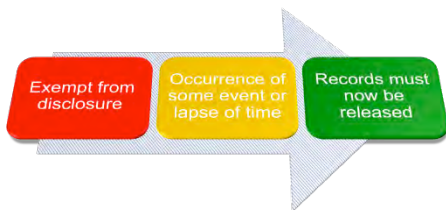
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### TRIGGERED RELEASE



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**RESPONSES:  
REDACTION**

Dear Mrs. Jones:

We received your proposal to provide swimming lessons at the county recreation center.

A deposit on pool equipment is required. You can send an electronic payment to account #54354-7711-7099.

We would like to recommend a meeting at 4:00 on July 23 to go over our policies and procedures.

Dear Mrs. Jones:

We received your proposal to provide swimming lessons at the county recreation center.

A deposit on pool equipment is required. You can send an electronic payment to account # [REDACTED].

We would like to recommend a meeting at 4:00 on July 23 to go over our policies and procedures.

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**RESPONSES:  
REDACTION**

Hi Megan:

The report is really coming along GREAT. I think it's important, however, to include a portion about how the city plans to address stormwater runoff in the Shoals subdivision.

By the way, Kelly loves her new middle school! She says her history teacher looks just like you and is almost as nice as you, too. Wanna grab a drink Friday after work?

Hi Megan:

The report is really coming along GREAT. I think it's important, however, to include a portion about how the city plans to address stormwater runoff in the Shoals subdivision.

[REDACTED]

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**RESPONSES:  
MYTHS, REALITY & INTERPRETATION**

**Do I have to create a new record in response to a request?**

**Can I wait to respond until I've heard back from some person or other agency?**

**Do I have to redact the entire record if everything but the page numbers are exempt?**

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**EXEMPTIONS:  
MYTHS, REALITY & INTERPRETATION**

Am I required to withhold a record that is covered by an exemption?

Can we have an internal policy that says we won't release records that are exempt?

Is "private" information exempt?

Is all information about a business a trade secret?

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**EXEMPTIONS:  
MYTHS, REALITY & INTERPRETATION**

When someone asks for salary information can I . . .

- Provide a salary range instead?
- Release data without names?
- Withhold the dates an employee was hired/left?

Do I have to release minutes that have not been approved by the public body?

Do court settlements have to be released?

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**WHAT ABOUT EMAIL?**

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graph TD; A((MESSAGES ON PERSONAL ACCOUNTS/ DEVICES)) --> B[IS IT ABOUT PUBLIC BUSINESS?]; C((MESSAGES ON GOVERNMENT ACCOUNTS/DEVICES)) --> B; B -- NO --> D[NOT A PUBLIC RECORD/ NOT SUBJECT TO FOIA]; B -- YES --> E[PUBLIC RECORD SUBJECT TO RELEASE UNDER FOIA];
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### WHAT ABOUT SOCIAL MEDIA?

Remember the email flow chart



Citizen responses have no expectation of privacy



Search platform's private messaging



If agency uses any/all, learn platform's policy for retrieving past entries.

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### WHAT ABOUT OUT-OF-STATE REQUESTS



Thus always to Virginians

# FOIA

[FOIA Council guidance document](#)

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### WHAT ABOUT MULTIPLE/BIG REQUESTS FROM THE SAME PERSON?

Use the tools already available under the law:

- charge for records
- make sure all fees are current
- petition a judge for more time

Get creative!



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## WHERE TO GO FOR HELP

**VCOG (me) — Megan Rhyne**

**540-353-8264 // [mrhyne@opengovva.org](mailto:mrhyne@opengovva.org)**

**The FOIA Council — Alan Gernhardt or Jessica Budd**

**866-448-4100 // [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov)**

**Virginia Association of Counties — Phyllis Errico**

**804-343-2509 // [perrico@vaco.org](mailto:perrico@vaco.org)**

**Virginia Municipal League — Michelle Gowdy**

**804-523-8525 // [mgowdy@vml.org](mailto:mgowdy@vml.org)**

**Virginia Attorney General — consult your state agency attorney**

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