

FOIA'S 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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DEFINITIONS

Public Body

"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

"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

don't have to do with the transaction of public business

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1. THE PUBLIC'S REQUEST
 Record(s) must be described with "reasonable specificity"

2. INTERNAL PROCESSING
 Workflow, how you calculate fees, tone/language of responses; who can/must/should be involved specific to YOUR office.

3. TIMELINES & RESPONSES
 5 working days to respond in one of 5 allowable ways

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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?

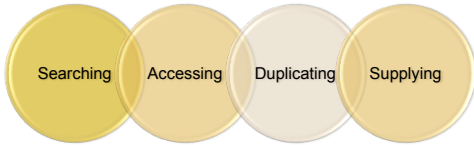
Does a FOIA request have to be in writing?

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

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INTERNAL PROCESSING: FEES

Actual cost • Reasonable • Discretionary



Deposit • Estimate • Billing

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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? How about knowing whether they will pay in person or online?

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?

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TIMELINES & RESPONSES



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MORE ON . . . 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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MORE ON . . . 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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**TIMELINES & RESPONSES:
MYTHS, REALITY & INTERPRETATION**

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

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

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

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

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EXEMPTIONS VS. OTHER LAWS

<div style="border: 1px solid gray; background-color: #cccccc; padding: 5px; width: 100px; margin: 0 auto;">FOIA exemptions</div> <div style="border: 1px solid gray; padding: 5px; width: 100px; margin: 10px auto;">Discretionary, MAY be released</div>	<div style="border: 1px solid gray; background-color: #cccccc; padding: 5px; width: 100px; margin: 0 auto;">Other laws</div> <div style="border: 1px solid gray; padding: 5px; width: 100px; margin: 10px auto;">Prohibited, CANNOT be released</div>
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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
- § 2.2-3705.8 limitation on record exclusions ("yeah, but...")
- § 2.2-3706 law enforcement

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MOST COMMON EXEMPTIONS*

PERSONNEL: 2.2-3705.1(1) + 2.2-3705.8(A) (the yeah, but)

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)

PPTA/PPEA PLANS: 2.2-3705.6(11)

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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**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 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

The FOIA Council — Maria Everett or Alan Gernhardt
866-448-4100 // foiacouncil@dls.virginia.gov

VCOG (me) — Megan Rhyne
540-353-8264 // mrhyne@opengovva.org

Virginia Association of Counties — Phyllis Errico
804-343-2509 // perrico@vaco.org

Virginia Municipal League — Michelle Gowdy
804-523-8525 // mgowdy@vml.org

Virginia Attorney General — consult your state agency attorney

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