

Rights and Responsibilities:

The Rights of Requesters and the Responsibilities of the County under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or in any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- If you are a citizen of the Commonwealth or a member of the media, you have the right to request to inspect **or** receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for records from the County, or a County constitutional officer

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.

- From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. For this reason, it is likely that you will be asked to make your request in writing, if you have not done so already. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking. If we do not feel that your request allows us to identify the records that you are seeking, we will follow up with you to clarify your request.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of the County, nor does it require the County to create a record that does not exist.
- You may choose to receive electronic records in any format used by the County in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on an external drive or disc, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

County FOIA Officer

To request records from the County, you should direct your request to the County's FOIA Officer. You may also direct your request directly to the

Department that has custody of the records if you know which Department has them. The County's FOIA Officer is:

**Crystal M. Dabney
(804) 748-1211
Email address: FOIA@chesterfield.gov**

The Freedom of Information Advisory Council is also available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at foiacouncil@dls.virginia.gov, or by telephone at 804-225-3056 or toll free 1-866-448-4100.

The County's Responsibilities in Responding to Your Request

- The County must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends, holidays, or other days on which the County's offices are closed for other reasons, such as weather.
- The reason behind your request for public records from the County is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow the County to require you to provide your name and legal address.
- FOIA requires that the County make one of the following responses to your request within the five-day time period:
 - 1) We provide you with the records that you have requested in their entirety.
 - 2) We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld and state the specific section(s) of the Code of Virginia that allow(s) us to withhold the records.
 - 3) We provide some of the records that you have requested but withhold other records. We cannot withhold an entire record if only a portion of

it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.

- 4) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you want). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.
 - 5) If it is practically impossible for the County to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Costs

- A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in

advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of the Code of Virginia.

- You may have to pay for the records that you request from the County. FOIA allows us to charge for the actual costs of responding to FOIA requests. This includes items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs up front or give you the opportunity to modify your request in an attempt to lower the estimated costs. Any costs incurred by the County in estimating the cost of supplying the requested records may be applied toward the overall charges may be required to pay for the supplying the requested records
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, we may require payment of the past-due bill before responding to your new FOIA request.

Types of records

The following is a general description of the types of records held by the County:

- Personnel records concerning employees and officials of the County
- Records of contracts to which the County is a party
- Budget records
- Records showing receipts and expenditures of the County

- Real estate records, such as leases, easements, deeds, and records related to the acquisition or sale of such property.
- Law enforcement records and other records of both internal and external investigations
- Building, planning, transportation, and other community development records
- Social service records
- Agendas, agenda items, minutes, and other records of the meetings of the Board of Supervisors, Planning Commission, and other governmental bodies appointed by the Board of Supervisors
- Records of the County Airport, County Fleet of vehicles, solid waste management, and security management
- Records related to Parks & Recreation and services offered by that Department
- Library records
- Information System Technology records
- Tax and licensing records
- Records of the County's Mental Health Department

If you are unsure whether the County has the record(s) you seek, you may contact the FOIA Officer or the Department which you think may have the record(s).

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The County commonly withholds records subject to the following exemptions but may also withhold records for other applicable exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)

- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Records of criminal investigations (§ 2.2-3706(B)(1))
- Tax records (§58.1-3)
- Health records (§ 2.2-3705.5(1))
- Appraisals and cost estimates of real property subject to a proposed sale, purchase, or lease (§ 2.2-3705.1 (8))
- Social service records (§63.2-102 through §63.2-105)
- Records relating to business, trade, or tourism development or retention when release of the information would adversely affect the financial interest of the County. (§ 2.2-3705.6 (3))
- Records requested by individuals who are not citizens of Virginia or representatives of the media (§ 2.2-3704 (A))

Policy regarding the use of exemptions

Since exemptions exist in order to protect some compelling public interest (such as privacy of individuals, criminal investigations, or the County's bargaining position in an on-going negotiation or discussion), it is inevitable that the County will need to rely on exemptions in many cases. For that reason, it is the County's practice to invoke all exemptions that are applicable to any request for records. This practice ensures that we treat all citizens the same way, to the greatest extent possible.