

Virginia Freedom of Information Act Access to Public Records - Quick Reference

FOIA = Democracy In Action

POLICY = Openness over secrecy

What is a public record?

Any type of record—electronic files, email, papers, letters, CD's, video or audio recordings, etc. If you're government and you have a record in the transaction of your public business, then it is a public record.

Exception: It is not a public record if it is not in the transaction of public business.

Examples: Letter from your insurance company, note from your spouse, invitation to a party, spam email, etc. are not public records.

Who has access rights under Virginia FOIA?

Citizens of Virginia & media representatives that broadcast or have circulation in Virginia.

BUT anyone can get a Virginia citizen to make a request on his or her behalf.

How long do I have to respond to a request?

FIVE (5) working days

What responses are allowed under FOIA?

Multiple choice:

- **YES:** Provide the records to the requester.
- **NO:** Identify the subject matter and volume of records being withheld, and cite the applicable exemption(s) in writing.
- **YES and NO:** Provide part of the records, but withhold portions that are exempt—Identify the subject matter of the records being withheld and cite the applicable exemption(s) in writing.
- **DO NOT HAVE IT:** Tell the requester in writing that the record cannot be found or does not exist. If you know someone else has the record, tell the requester.
- **NEED MORE TIME:** Tell the requester in writing you are invoking your right to seven (7) additional working days to respond. If the request is for criminal investigative files pursuant to § 2.23706.1, you may invoke your right to 60 additional working days to respond. If that is not enough time, work out a deal with the requester. If you cannot reach a deal, you may petition a court for more time.

Do you have to provide the records for FREE?

NO: You may charge, but charges must be **REASONABLE** and may not exceed **ACTUAL** costs for:

- **SEARCHING** for records (which includes exclusion review);
- **ACCESSING** records;
- **DUPPLICATING** records; and
- **SUPPLYING** records.

You may NOT charge for secondary legal review, maintenance costs, or other general expenses. What is **REASONABLE**? Only a court can rule on what is reasonable, but if you think the charges will land you in front of a judge, it probably is not reasonable. The requester has a right to an **ESTIMATE** in advance. You may collect an **ADVANCE DEPOSIT** if the estimated charges will exceed \$200.

Specific Questions? Call or email the FOIA Council:

804-698-1810

1-866-448-4100

foiacouncil@dls.virginia.gov

The Virginia Freedom of Information Advisory Council was created to issue opinions on the operation and application of the Freedom of Information Act (FOIA), to publish educational materials, and to provide training about FOIA. We are not a repository of any records, other than those created by this office.