

Commonwealth of Virginia Freedom of Information Act

The Freedom of Information Act, also known as FOIA, is a federal statute that provides the public with the right to request access to records in the possession of government agencies. FOIA establishes a presumption that records are accessible to the people, except for those records protected from disclosure by any of the nine exemptions contained in the law or by one of three special law enforcement record exclusions. FOIA does not grant an absolute right to examine documents; FOIA establishes the right to request records and to receive a response to the request. If a record cannot be released, the requestor is entitled to be told the reason for the denial. The requester also has a right to appeal the denial and, if necessary, to challenge it in court.

1. Virginia FOIA

The Virginia Freedom of Information Act (FOIA), § 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 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.

2. FOIA Rights

- a. Citizens have the right to request to inspect or receive copies of public records, or both.
- b. Citizens have the right to request that any charges for the requested records be estimated in advance.
- c. If citizens believe that their FOIA rights have been violated, they may file a petition in district or circuit court to compel compliance with FOIA.

3. Making a Request from HRPDC/HRTPO

- a. Citizens may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that citizen requests be in writing, nor do they need to specifically state that they are

requesting records under FOIA. From a practical perspective, it may be helpful to both them and the person receiving their request to put their request in writing. This allows them to create a record of their request. It also gives us a clear statement of what records they are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to their FOIA request if they elect not to put it in writing.

- b. Their request must identify the records they are seeking with "reasonable specificity." This is a common sense standard. It does not refer to or limit the volume or number of records they are requesting; instead, it requires that they be specific enough so we can identify and locate the records they are seeking.
- c. Their request must ask for existing records or documents. FOIA gives them a right to inspect or copy records; it does not apply to a situation where they are asking general questions about the work of HRPDC/HRTPO, nor does it require HRPDC/HRTPO to create a record that does not exist.
- d. They may choose to receive electronic records in any format used by HRPDC/HRTPO in the regular course of business. For example, if they are requesting records maintained in an Excel database, they may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- e. If you have questions about their request, they should cooperate with staff's efforts to clarify the type of records they 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 employees may need to discuss their request with them to ensure it is understood what records they are seeking.

To request records from HRPDC/HRTPO, citizens may direct their request to the Executive Director at 723 Woodlake Drive, Chesapeake, VA 23320, 757- 420-8300, 1-800-875-9788 (toll free), 1-800-390-2578 (TTY-toll free), 757- 523-4881 (fax). Citizens may also contact the Executive Director with questions concerning requesting records from HRPDC/HRTPO. In addition, the Freedom of Information Advisory Council is available to answer any questions they may have about FOIA. The Council may be contacted by e-mail at foiacouncil@leg.state.va.us, or by phone at 804-225-3056 or [toll free] 1-866-448-4100.