

Freedom of Information Act Office (FOIA)

City of Suffolk FOIA Office

442 West Washington Street, Suite 1163

Suffolk, VA 23434

(757) 514-4100 (phone)

(757) 514-4109 (fax)

foia@suffolkva.us (email)

Rights & Responsibilities:

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

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

The City of Suffolk and FOIA

With the goal of promoting an institutional culture for compliance with the laws of the Freedom of Information Act, on March 21, 2007, the Suffolk City Council adopted an ordinance creating the FOIA Office, Suffolk City Ordinance Number 07-O-032. The FOIA Office was established to lead the organization in handling the FOIA requests from the general public and media, and to implement FOIA awareness throughout the organization.

The Suffolk FOIA Office

The City of Suffolk opened the FOIA Office on May 1, 2007. The FOIA Office is located in Suffolk City Hall, 442 West Washington Street, Suite 1163, Suffolk, VA, 23434, and has signage that promotes awareness and visibility. The FOIA Office is equipped with a foyer area where those seeking public records may enter, submit FOIA requests, review records, and view municipal programs or meetings on the television or computer.

ROLE OF CITY EMPLOYEES IN FOIA

Each Suffolk City Employee has a role in adhering to FOIA and the operations of the City of Suffolk. An employee is defined as an individual who is employed on a full-time, part-time, or temporary basis, in any position of Suffolk City government

Requests for public records, whether made verbally or in writing, or by any other means, should always be treated as formal requests. The requestor does not have to use the word "FOIA" when making a request. All requests for public records are FOIA requests and employees should respond immediately by forwarding the request to the FOIA Office. The FOIA Officer has FIVE DAYS to respond from the time the request is received by the employee.

FOIA Departmental Contacts and City employees should forward requests to the FOIA Officer for immediate action. It is imperative that the City of Suffolk and the FOIA Office respond to the requests efficiently and timely.

The FOIA Request

Your FOIA Rights

- 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.

The Virginia Freedom of Information Act requires that public records be made available to citizens and the media for copying and/or inspection. FOIA refers to records that are in existence and does not require that the City of Suffolk create records. The City of Suffolk may abstract and summarize records, by agreement with the requestor.

Making a Request for records from the City of Suffolk

- 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. 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.

- 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 City of Suffolk, nor does it require the City of Suffolk to create a record that does not exist.
- You may choose to receive electronic records in any format used by the City of Suffolk 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 a computer disk, 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.

To request records from the City of Suffolk you may direct your request to Diana Klink, FOIA Officer/Director, Media & Community Relations Department, or Tim Kelley, Deputy FOIA Officer/Manager, Media & Community Relations Department. Ms. Klink can be reached at 757-514-4100 (phone), City of Suffolk FOIA Office, 442 West Washington Street, Suite 1163, Suffolk, VA, 23434, 757-514-4109 (Fax), or email at foia@suffolkva.us. Mr. Kelley can be reached at 757-514-4100 (phone), City of Suffolk FOIA Office, 442 West Washington Street, Suite 1163, Suffolk, VA, 23434, 757-514-4109 (Fax), or email at foia@suffolkva.us. You may also contact Ms. Klink or Mr. Kelley with questions you have concerning requesting records from the City of Suffolk. In addition, the Freedom of Information Advisory Council is 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 phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The City of Suffolk's Responsibilities in Responding to Your Request

- The City of Suffolk 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 or holidays.

- The reason behind your request for public records from the City of Suffolk 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 City of Suffolk to require you to provide your name and legal address.

- FOIA requires that the City of Suffolk 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 of the Code of Virginia that allows 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 City of Suffolk 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.

The Duties of the FOIA Officer, Deputy FOIA Officer, and Assistant Deputy FOIA Officer

The FOIA Officer, Deputy FOIA Officer, and Assistant Deputy FOIA Officer are responsible for receiving and responding to requests for public records. The FOIA Officer, Deputy FOIA Officer, and Assistant Deputy FOIA Officer determine which Department(s) will supply the records based on the request. The FOIA Officer, Deputy FOIA Officer, and Assistant Deputy FOIA Officer will communicate with the FOIA Departmental Contacts on the specific request and establish the deadline for a complete response. The FOIA Officer, Deputy FOIA Officer, and Assistant Deputy FOIA Officer will communicate with the requestor if there are questions about the request, or if the FOIA Departmental Contact has concerns.

A requestor may choose to review records in the Office, or to receive copies of the records. It is the responsibility of the FOIA Officer to review the documents to be released, and mail, fax, email or have them ready and available for review or pick-up within five working days.

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. 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. All charges for the supplying of requested records shall be estimated

in advance at the request of the citizen 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 City of Suffolk. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include 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 upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, the City of Suffolk may require payment of the past-due bill before it will respond to your new FOIA request.

FOIA Violations

Failure to respond to a request for records within five working days constitutes a violation of law. Also, withholding records that are not exempt and overcharging for records are violations of the law. Violations can result in civil penalties up to \$2500 per violation to the individual employee and/or the City of Suffolk.

Departments and individuals who are not responsive, delay, and/or withhold information for release will receive a letter of non-compliance from the FOIA Officer which will be sent to the City Manager for record, review and action. Failure to respond by an employee will be considered as a reason to discipline.

Routine Department Responses

Departments that distribute publications, flyers, and informational and promotional brochures are encouraged to provide these directly to the general public.

FOIA Log Sheet

The FOIA Office maintains a log of all FOIA requests and responses. This log is updated daily with information on the status of the response for each FOIA request and its final disposition.

Types of records

The following is a general description of the types of records held by the City of Suffolk.

- Personnel records concerning employees and officials of the City of Suffolk
- Records of contracts which the City of Suffolk has entered into
- Permits issued by the City of Suffolk Planning & Community Development Department
- Records related to incident responses by the City of Suffolk Police Department and City of Suffolk Fire & Rescue Department

If you are unsure whether the City of Suffolk has the record(s) you seek, please contact Diana Klink, FOIA Officer/Director, Media & Community Relations Department, or Tim Kelley, Deputy FOIA Officer/Manager, Media & Community Relations Department. Ms. Klink can be reached at 757-514-4100 (phone), City of Suffolk FOIA Office, 442 West Washington Street, Suite 1163, Suffolk, VA, 23434, 757-514-4109 (Fax), or email at foia@suffolkva.us. Mr. Kelley can be reached at 757-514-4100 (phone), City of Suffolk FOIA Office, 442 West Washington Street, Suite 1163, Suffolk, VA, 23434, 757-514-4109 (Fax), or email at foia@suffolkva.us.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The City of Suffolk commonly withholds records subject to the following 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))
- Out-of-State FOIA requests are not honored (§ 2.2-3704 (A)).

Policy regarding the use of exemptions

- The general policy of the City of Suffolk is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of the City of Suffolk.
- The general policy of the City of Suffolk is to invoke the contract negotiations exemption whenever it applies in order to protect the City of Suffolk's bargaining position and negotiating strategy.