

City of Suffolk

FREEDOM OF INFORMATION ACT OFFICE

Policies and Procedures

The Virginia Freedom of Information Act

The Virginia Freedom of Information Act, § 2.2-3700 through § 2.2-3714 of the Code of Virginia, was established in order to make government entities throughout the Commonwealth of Virginia more open to the public.

The Virginia Freedom of Information Act, § 2.2-3700 through § 2.2-3714 of the Code of Virginia, is the primary state law governing citizen access to public records and entry to meetings of public bodies. The Virginia FOIA Law guarantees citizens of the Commonwealth of Virginia and representatives of the media access to public records held by public bodies, public officials, and public employees. By law, the Freedom of Information Act (FOIA) requires a response to requests within five working days.

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.

Staff Responsibilities

All City of Suffolk employees have a responsibility to comply with FOIA. The general role and responsibilities of the employee are outlined in this section as specified in the city ordinance.

FOIA Officer - The FOIA Officer is the Director of Media & Community Relations and is responsible for coordinating the requests for public records for the City of Suffolk. Except as specifically provided otherwise in the City Code, the decisions of the FOIA Officer are to be made independently. Upon the request of the FOIA Officer, the City Attorney shall provide legal advice to the office and shall make determinations as to whether documents must, as a matter of law, be released pursuant to the Act. With the consent of the FOIA departmental contact for the department involved, the FOIA Officer may release a document which the Act permits to be withheld; or may determine that the voluntary decision to release the document is to be made by the City Manager in consultation with the City Attorney. The FOIA Office will provide a report to

City Council in January and July of each year. The FOIA Officer is required to attend training from the Virginia Freedom of Information Advisory Council. (See the Role of the FOIA Officer on page 3 for daily responsibilities)

City Manager - The City Manager appoints the Deputy FOIA Officer who shall perform all the duties of the Freedom of Information Act Officer in the FOIA Officer's absence. The City Manager may appoint such other deputies and support staff from among the employees of the Media & Community Relations Department as he/she finds necessary or appropriate

Deputy FOIA Officer - The Deputy FOIA Officer is appointed by the City Manager. The Deputy FOIA Officer will carry out all of the duties and responsibilities of the FOIA Office in the FOIA Officer's absence. The FOIA Officer is required to attend training from the Virginia FOIA Advisory Council.

Assistant Deputy FOIA Officers - The City Manager may appoint staff from among the Media & Community Relations Department to handle the duties and responsibilities of the FOIA Office in the absence of the FOIA Officer and the Deputy FOIA Officer. The assistants are required to attend training from the Virginia FOIA Advisory Council.

City Attorney - Upon request from the FOIA Officer, the City Attorney, or his/her designee, shall provide legal advice and make determinations as to whether documents are exempt under the Act. The City Attorney will consult with the City Manager on legal matters pertaining to a specific request as needed.

FOIA Departmental Contacts - The head of each City Department must designate an employee to support the work of the FOIA Officer. The FOIA Officer will work directly with the Departmental Contacts in responding to requests for public records from the department. The Departmental Contacts are required to attend training from the Virginia Freedom of Information Advisory Council coordinated by the FOIA Office.

Suffolk City Employees - All employees of the City of Suffolk have a responsibility in FOIA.

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. For the purpose of this document, 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.

If an employee is asked for public records at any place or at any time during their work hours, and they are not able to provide them, it is the responsibility of the employee to notify their FOIA Departmental Contact or the FOIA Officer of the request.

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.

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.

A Public Record

A public record is a 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 owned or prepared 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. 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.

FOIA requests may be submitted by mail, email, telephone, in person (walk-in), and by any other means. FOIA requests do not need to include the word "FOIA", but all requests must include the name and address of the requestor and the request must be reasonably specific. The day after the FOIA Officer receives the request is considered the first day of the maximum five-working-day response period.

Mail - If received by mail, the FOIA Officer will date stamp the letter. This stamp signifies the official date of receipt.

Email - The date that the FOIA Officer opens the email is the official date of receipt of the request.

Telephone and Walk-In – A "FOIA Request Form" should be completed by the requestor or by the staff person assisting the requestor. The form must include the date, the name and address of the requestor, and specific information about the public record that is being requested. A telephone number is very useful, yet, it is not required to be provided. **A "FOIA Request Form" may be substituted by an email that lists all required information as stated above.

A requestor may choose to receive electronic records in the same format in which the City of Suffolk creates and maintains them in the regular course of business. For example, if a Department of the City of Suffolk maintains a particular record in an Excel database, you may request to receive the record electronically by email, on a computer disk, or you may request to receive a paper copy.

The Duties of the FOIA Officer

The FOIA Officer is responsible for receiving and responding to requests for public records. The FOIA Officer determines which Department(s) will supply the records based on the request. The FOIA Officer will communicate with the FOIA Departmental Contacts on the specific request and establish the deadline for a complete response. The 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.

Responses to FOIA Requests

Virginia FOIA outlines the five possible responses to a FOIA request. If a request is being denied, or records are not being provided according to the request, the FOIA Officer must respond in writing.

THE FIVE POSSIBLE RESPONSES

- ▶ The requested records are being provided and are enclosed.
- ▶ The requested records are being provided in part and withheld in part because the release of part of the record is prohibited by law. The law must be properly cited in the response and include the Virginia Code Section exemption.
- ▶ It is not practically possible to produce the records within five working days and we will need to invoke an extension. – An extension notification must be made in writing. This extension must be made within the five day response time-frame, and will add an additional seven working days to the response time, totaling 12 working days.
- ▶ The requested records are being entirely withheld because their release is prohibited by law or the City of Suffolk has exercised its discretion to withhold the records in accordance with FOIA. The law must be properly cited in the response and include the Virginia Code Section exemption.
- ▶ The requested records could not be found or do not exist.

FOIA Departmental Contact Procedures

Based on the subject of the FOIA request, the FOIA Officer will send the request to the Departmental Contact. The Departmental Contact should review the request and work with staff in that Department and in other Departments, as needed, to supply the records requested.

The Departmental Contact should provide all of the copies of the requested records by the deadline to the FOIA Officer. If there are issues concerning the timely release of public records, the Departmental Contact must notify the FOIA Officer immediately to request an extension from the requestor.

If the requestor makes a FOIA request to review records, the department file or documents will be submitted to the FOIA Officer. The FOIA Officer will review the records and notify the requestor that the records are available for inspection and copying. The FOIA Officer will return records to the Departmental Contact after the FOIA request has been completed.

Each Departmental Contact or Suffolk City Employee that receives a FOIA request from the FOIA Officer must reply within the deadline specified.

If a Department does not have any records for the FOIA request, the Departmental Contact/Suffolk City Employee must reply stating that they do not have the records that are being requested.

As a general practice, all replies by email to the FOIA Officer should include the original FOIA Request message.

If information from records must be redacted, the Departmental Contact must discuss this with the FOIA Officer. Redacting should only be done by the FOIA Officer, since there must be an exemption in the Code of Virginia to support the redaction.

Charges

FOIA makes provisions for local government agencies to charge for requested records, yet charging for records is not mandatory. The Suffolk FOIA Office makes reasonable charges for the actual costs incurred in accessing, duplicating, supplying, or searching for requested records. Charges must be fair and may not include extraneous or surplus fees unrelated to the production of the records. It is the goal of the Suffolk FOIA Office to keep production costs as low as possible.

Citizens and members of the media may request an estimate of the cost of supplying the requested records in advance of the staff searching for and duplicating the records.

The Suffolk FOIA office charges for the following:

Copies — The City of Suffolk has a Fee Schedule that includes the monetary amount that the City is allowed to charge for municipal services. The Fee Schedule lists the charge for copies of documents at 25 cents per page. The FOIA Office charges 25 cents for copies as determined by the Fee Schedule.

Labor — The FOIA Office can charge for staff time used to search for and duplicate records. The rate will reflect the hourly wage of the employee who has the skills needed to research and prepare the records for release.

Postage — FOIA allows that postage charges be incurred by the requestor.

If estimate is over \$200 — An estimate of charges will be explained to the requestor prior to staff starting the FOIA request response. If it is estimated that the cost to produce documents will exceed \$200, the City of Suffolk will request a deposit prior to performing the work. The deposit will be applied to the total bill upon completion of the FOIA request. If remaining balance is not paid in 30 days, the requestor will be notified that new FOIA requests will not be processed until payment in full has been received.

Virginia FOIA Code section §2.2-3704 (I) provides that, before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

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.

FOIA Office Resources

The Suffolk FOIA Office requests advisory opinions, guidelines, training, and educational material from the Virginia Freedom of Information Advisory Council.

The Virginia Freedom of Information Advisory Council is a state agency, with the expertise to help resolve disputes of Freedom of Information Act Issues. The FOIA Council answers questions from private citizens, state and local public officials, and the media about access to public records and meetings.

By issuing advisory opinions, whether oral or written, the FOIA Council offers assistance to resolve disputes by clarifying what the law requires and to guide future practices. The FOIA Council has no authority to mediate disagreements, but may be called upon as a resource to offer solutions to resolve FOIA disputes. As part of its statutory duties set forth at § 30-179 of the Code of Virginia, the Freedom of Information Advisory Council is charged with providing opinions about the application and interpretation of Virginia's Freedom of Information Act, conducting FOIA training seminars, and publishing educational materials.

Commonly Used 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)).