

Public School Records Consortium



Staunton
Stonewall
Jackson Hotel
May 5, 2015

Dear Mr. _____

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (§2.2-3700 et seq.). Generally, you have made a request for the following records:

1. _____
2. A copy of the five-year comprehensive plan.

Our response is as follows:

1. _____
2. Please note your request was received on Monday, April 4, 2011. Accordingly, please be advised that it is not practically possible to provide the requested records or determine whether they are available within the five day period (April 11, 2011) required by FOIA because of insufficient staff. Therefore, we are invoking subsection B4 of §2.2-3704 of the Code of Virginia to provide us with seven additional working days to respond to your request.

In reference to #2 above, since this is the five-year comprehensive plan and the School Board adopted it several years ago, a staff member will need to go back and research the archived records. Please note that you will be billed for all labor costs involved in researching this request, as per Policy _____ and §2.2-3704 (F) of the Code of Virginia. The labor cost is \$20.14 per hour. If you desire a copy, the cost is 40 cents per page.

Sincerely,

Division Superintendent

Dear Ms. Rhyme:

On March 23, 2015, this office received your request for records made in accordance with the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia, 1950, as amended) ("the Virginia Code"). In summary, you have asked for:

1. A copy of the employment contract between the County Administrator (Byrd) and James City County.
2. Any fire inspection reports conducted during the week of March 2 through March 6, and
3. A copy of the County's legislative agenda priorities for 2015.

On March 23, responsive records for #1 and #3 were attached electronically to the 9:36 a.m. email. In regards to #2, responsive records from our Building Safety and Permits office are attached electronically. Responsive records from our Fire Marshal's office are enclosed*. Please be advised that no records have been withheld from the response.

The Virginia Code provides for an assessment of fees for resources required for fulfilling a FOIA request, and the rate set forth in the County's Administrative Regulation is \$22 per hour of staff time required to fulfill the request. The total cost of your FOIA request is indicated below for your convenience, but you will receive a formal invoice by mail from the James City County Accounting Office. Please make checks payable to the James City County Treasurer. Please contact me at 757-253-6064 if you have any questions.

Staff Time:	45 minutes @ \$22 per hour	= \$16.50
Copies:	3 @ .15 per page	= \$.45
Tax on copies:		= \$.03
Total:		= \$16.98

*Per your request, the responsive records from the Fire Marshal's office are available for pick up at the front desk of 101-D Mounts Bay Rd. We are open 8 a.m.-5 p.m. Monday-Friday.

Sincerely,

What a citizen hears

- Poor records management
- Inexplicable responses
- Excessive fees
- Stonewalling
- Adversarial and/or intimidating

FOIA is only as good as the people who use it

There is the letter versus the spirit of the law

Create a culture of openness

FOIA encourages government, requesters to work together

FOIA contains a lot of discretion

Try to imagine yourself as a records requester

YOU

YOU have the power to shape a citizen's view of government.



Reduce your workload

- Proactively make records available before a request is made
 - at the clerk's desk
 - on your website: reading rooms
- Track your requests
 - deadlines
 - requester contacts
 - internal point person
 - fees
 - The records provided or the denial/response

Reduce your workload

- Purge records after their retention period has expired
 - Don't collect information you don't need
- fewer records + less information on each record = easier to search for and locate

Know your fees



- Review periodically
- Actual cost = what it costs YOU to get the records
- Consider waiving for small requests

<http://foiadcouncil.dls.virginia.gov/ref/FOIACHarges.pdf>

FOIA policy & presumptions

- All records are presumed open
- All exemptions are to be construed narrowly
- The rest of FOIA is to be construed liberally, in favor of openness
- The affairs of government are not intended to be conducted in an atmosphere of secrecy
- The PUBLIC is to be the beneficiary

Source: FOIA § 2.2-3700

Making a FOIA request

- Describe the record with “reasonable specificity”
- No duty to put it in writing
- No duty to narrow the request
- No duty to say “FOIA”
- No duty to state a purpose or explain future use

5 allowable responses

- Here are all the records
- We’re withholding/redacting some
- We’re withholding all of them
- We don’t have them/they don’t exist
- We need an additional 7 days

Remember....

- When records are withheld/redacted, the exemption/Va. Code section allowing it must be cited in writing
- The 5-day response deadline starts the day after you receive a request
- Failure to respond is a denial and is considered a **VIOLATION** of FOIA

The art of the deal



Special Issue #1: What about privacy?

There is no catch-all
privacy exemption in FOIA

Specific privacy exemptions

In FOIA

- Financial data -- personal credit card or bank account numbers
- Email addresses of people who've signed up for government new alerts
- Cell phone numbers of undercover officers

Specific privacy exemptions

Elsewhere in the Code

- Medical information
- Social services, child enforcement info
- Social Security Numbers (first 5 digits)
- Concealed handgun permits

Specific privacy exemptions

FERPA (& FOIA: 2.2-3705.4(1))

- Protects "education records"
- Frequently misapplied
- Directory information
- Statistical and aggregate data
- "Mosaic" theory

FERPA resources

- Full text:
<http://www.law.cornell.edu/uscode/text/20/1232g>
- U.S. Department of Education advisory that FERPA only covers information about students that comes directly from confidential student records.
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/montcounty0215.html>
- “FERPA and access to public records” by the Student Press Law Center
http://www.splc.org/pdf/ferpa_wp.pdf

Special Issue #2: Email, Cell Phones & Social Media

Just like any other record
Judge it on the content, not the medium
What matters is whether it discusses
“public business” not where it came from

Don't be Hillary Clinton



- Better to use government servers/accounts
- Search ALL in response to a FOIA request
- Develop policies, seek help from Library of Virginia

Social Media



- Facebook, Twitter, LinkedIn, YouTube are public records
- Citizen responses have no expectation of privacy
- Remember to search off-site messaging
- If agency uses any/all, learn the policy for retrieving past entries

Special Issue #3: Out-of-state Requests

You don't have to answer them, but why wouldn't you?

Special Issue #4: This guy is bugging the heck out of us!

A cost of public service: find a way to grin and bear it



What can I do?

- Answer every new request.
- For repeat requests, tell him it's already been filled (use form letters!).
- If you haven't charged him, do it now. And make sure his account up to date.
- If you can't get your other work done, ask a judge to grant more time to respond.

Where to go for help

Virginia Coalition for Open Government

www.opengovva.org

Freedom of Information Advisory Council

foiacouncil.dls.virginia.gov

Library of Virginia

www.lva.virginia.gov/agencies/records/
