

Public School
Records Consortium



Williamsburg
Fort Magruder
Inn

March 19,
2013

Dear Mr. _____,

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (22.2-3700 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 (b) of 22.2-3704 of the Code of Virginia to provide us with seven additional working days to respond to your request.

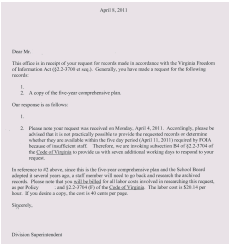
In reference to #2 above, since this is the five-year comprehensive plan and the School Board adopted it several years ago, a staff member will need to go back and research the archived records. Please note that you will be liable for all labor costs involved in researching this request, as per Policy _____ and 22.2-3704 (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

What a citizen hears

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



FOIA is only as
good as the
people who use it

FOIA encourages government, requesters to work together
Try to imagine yourself as a records requester
There is the letter versus the spirit of the law
FOIA contains a lot of discretion
Create a culture of openness

YOU

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



FOIA as PR tool

- Friendly, courteous and helpful
- Civic-minded
- Honest
- Open to working together

Reduce your workload

- Proactively make records available before a request is made
 - at the clerk's desk
 - on your website

Electronic reading rooms

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Electronic Reading Room

On October 2, 1986, President Carter signed into law the Electronic Freedom of Information Act. Amendments to 1986 and 1992 FOIA Amendments. Under subsection (d)(2) of the FOIA, agencies must make four distinct categories of records affirmatively available for public inspection and copying: (1) "meeting open" records; (2) "records of internal agency operations"; (3) "records of internal agency personnel"; and (4) as of March 31, 1987, "records disclosed in response to a FOIA request that the agency" "disclosed in response to a request to disclose the subject of a document request for a substantially the same records." In addition, the E-FOIA Amendments provide for the accessibility of other records and the Commission encourages agencies to make these records available to the public.

- Frequently Requested Records
- FOIA Annual Reports
- Mergers & Acquisition Information
- Citizens Guide to FOIA
- Agency Policy Statements
- FTC Rules (16 CFR 312.0-312.999)

- Hot Topics
- FTC Administrative Staff Manuals
- Business and Consumer Guidance
- FOIA Handbook (BPP)
- FTC Orders and Orders
- Chief FOIA Officer Report

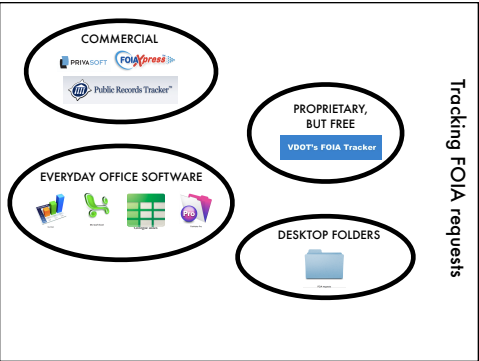
* Many public records created prior to 1987 are not on-line and may be available through our Consumer Response Center. Requests for public records should be made to:

Consumer Response Center (CROC)
Federal Trade Commission
Room 100
605 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Telephone number: (202) 326-3222

Reduce your workload

- Track your requests
 - deadlines
 - requester contacts
 - internal point person
 - fees

- # Reduce your workload
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 - deadlines
 - requester contacts
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Reduce your workload

- Purge records after their retention period has expired
- Don't collect information you don't need

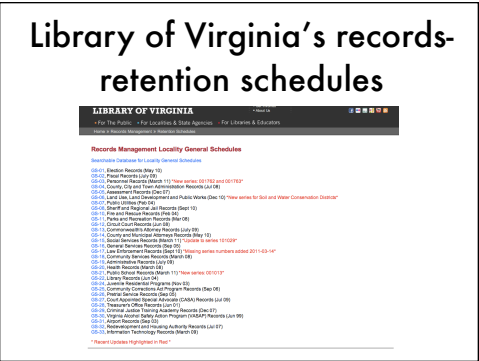
fewer records + less information on each record
= easier to search for and locate

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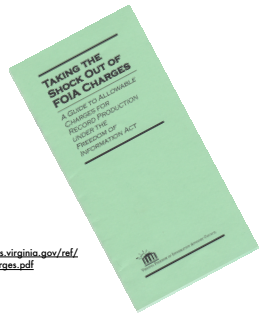
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[illegible][illegible][illegible][illegible]

Manage your records

- Use folders, lots and lots of folders
- Use keywords, lots and lots of keywords
- Use meta data
- Don't pass the cost of poor records-management on to the FOIA requester
- Back-up, review and purge



<http://foiaincouncil.dva.virginia.gov/ref/FOIACharges.pdf>

Know your fees ahead of time

FOIA basics

The 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

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 say who you are or why you want the record

Really?



what if the requester is a terrorist?



what if they're just using our data to make money?

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)
- Starting July 1: 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

Email

- Just like any other record
- Judge it on the content, not the medium
- What matters is whether it discusses “public business,” not which computer / email account it was sent or received from

Phones & tablets

- Treat them the same way your would treat email & other records
- Create /update policies and procedures for accessing records on work and personal phones



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 #4: Out-of-state Requests

The letter of the law



Virginia is one of only 5 or 6 states in the country that says: you can only use our public records act (FOIA) if you are from our state.



McBurney v. Young



- The U.S. Supreme Court heard oral arguments on Feb. 20
- A decision will be issued by June 30 at the latest

Letter v. spirit of the law

The Letter

You don't have to fill a request for records made by someone from another state

People have interests in other states that defy geographic boundaries

The Spirit

Special Issue #3:
This guy is bugging
the heck out of us!

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.

GRIN & BEAR IT.



Where to go for help

- Virginia Coalition for Open Government
- Freedom of Information Advisory Council
- Attorney General
