

City of Winchester, VA

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 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.

Virginia Citizens Have the Right to:

- Request to inspect or receive copies of public records, or both.
- Request that any charges for the requested records be estimated in advance.
- File a petition in district or circuit court to compel compliance with FOIA if they believe that their FOIA rights have been violated.

The FOIA Request

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 Winchester create records. The City of Winchester may abstract and summarize records, by agreement with the requestor. Agencies are under no obligation to extend benefits of FOIA to requests to individuals and media bodies residing outside of Virginia.

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 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. The five-day period does not include weekends or holidays.

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

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

Telephone and Walk-In – A “FOIA Request Form” is available should the requestor wish to complete it or the staff person assisting the requestor may fill it out to help clarify the request. Note: The City may not require the requestor to fill out a form if they choose not to do so. In the event a requestor chooses not to fill out a form, staff should do so on their behalf. 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.

Public Meetings

All meetings of all public bodies, as defined in FOIA, as well as any meetings of their committees or sub-committees, are generally required to be open meetings, subject to certain exceptions spelled out in the Act. An open meeting is a meeting open to the members of the public.

Under VA FOIA, for there to be a "meeting" subject to the Act, there must be at least three members of the body, or a quorum of the public body if less than three, present for the purpose of discussing or transacting public business. A gathering of public employees is not a meeting under the Act.

During the course of a public meeting, a public body may go into a closed meeting to discuss certain specific types of matters set forth in FOIA. In order to do so, the public body must follow the specific procedures set forth in VFOIA to go into and come out of closed session.

FOIA permits members of the public to photograph or record (audio, visual, or audio-visual) public meetings. It also permits public bodies to adopt reasonable rules concerning the use of cameras and recorders, designed to prevent disruption.

All City Council meetings (excluding emergency meetings) are recorded via video and audio devices.

Making a Request for Records

- Citizens can make a request via mail, fax, e-mail, in person, or over the phone - FOIA does not require that requests be in writing, nor does the request need to specifically state that you are requesting records under FOIA. However, for convenience, a FOIA request form is available on the City’s internal website for staff members to use as needed.
 - From a practical perspective, it may be helpful to put the citizen’s request in writing. This allows for the creation of a record of the request. It also gives the City a clear statement of what records are being requested, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to FOIA requests if the citizen elects to not put it in writing.
- Requests must identify the records being sought with "reasonable specificity" - This is a common-sense standard. It does not refer to or limit the volume or number of records being requested; instead, it requires that the citizen be specific enough so that the City can identify and locate the records that requested.
- Requests must ask for existing records or documents - FOIA gives the citizen a right to inspect or copy public records; it does not apply to a situation where the citizen is asking general questions about the work of the City or any department, nor does it require the City to create a record that does not exist.

- Citizens can request to receive documents electronically.
 - For example, if the citizen is requesting records maintained in an Excel database, they may request to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records. The City will make efforts to oblige such a request to the extent reasonably practicable.
- Citizens can direct requests to the department that is the custodian of the record or to the FOIA Officer.

Staff Responsibilities

All City of Winchester 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:

Staff/Custodian of Records – For “routine” requests for information, staff members who receive a request for information shall ensure that it is promptly and properly received by the custodian of the records requested. For “routine” requests, the custodian will issue a response in accordance with the requirements of the Act and this policy. All “non-routine” FOIA requests shall promptly be routed to the FOIA Officer for disposition.

FOIA Officer - The FOIA Officer also serves as the Public Information Officer whose responsibilities include, but are not limited to, coordinating and ensuring proper response to requests for public records issued to the City of Winchester and its employees. All “non-routine” FOIA requests shall be handled by the FOIA Officer. When in doubt as to whether or not a request is “routine” or “non-routine” the request should be promptly forwarded to the FOIA Officer. Upon receipt of a FOIA request, the FOIA Officer provides a proper response in accordance with the requirements of the Act and this policy. Upon the request of the FOIA Officer, the City Attorney shall provide legal advice to the FOIA Officer and shall make recommendations as to whether documents should, as a matter of law, be released pursuant to the Act. The FOIA Officer may release records which the Act permits to be withheld under a discretionary exemption with consultation from the Department Head acting as custodian of the requested records. If the FOIA Officer and the Department Head do not agree regarding the exercise of the discretionary exemption, the FOIA Officer may proceed only after consultation with the City Attorney, and the City Manager. With the exception of records excluded as Work Product or Attorney Client Privilege or records which are precluded from disclosure by law (does not include the exercise of FOIA exemptions), under no circumstances shall any documents be withheld from the FOIA Officer, the City Attorney, or the City Manager. The FOIA Officer is required to attend training from the Virginia Freedom of Information Advisory Council.

City Manager - The City Manager appoints the FOIA Officer and may appoint any Deputy FOIA Officers as deemed necessary and appropriate at his/her discretion. The FOIA Officer shall serve at the pleasure of and under the direction and supervision of the City Manager.

Deputy FOIA Officer - Deputy FOIA Officers may be appointed by the City Manager. A Deputy FOIA Officer may carry out all of the duties and responsibilities of the FOIA Office in the FOIA Officer’s absence. All Deputy FOIA Officers are required to attend training from the Virginia FOIA Advisory Council.

City Attorney - Upon the request of the FOIA Officer, the City Attorney shall provide legal advice to the FOIA Officer and shall make recommendations as to whether documents should, as a matter of law, be released pursuant to the Act. The City Attorney will consult with the City Manager on legal matters

pertaining to a specific request as needed. If the FOIA Officer and the Department Head do not agree regarding the exercise of the discretionary exemption, the FOIA Officer may proceed only after consultation with the City Attorney, and the City Manager.

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 or their designees shall support all efforts of the FOIA Officer in responding to requests for information. Upon request, the FOIA Departmental Contacts shall collect, assemble, and deliver all documents requested by the FOIA Officer, City Attorney, or City Manager in preparing a response to a FOIA request. With the exception of records excluded as Work Product or Attorney Client Privilege or records which are precluded from disclosure by law (does not include the exercise of FOIA exemptions), under no circumstances shall any documents be withheld from the FOIA Officer, the City Attorney, or the City Manager. The Departmental Contacts are encouraged to attend training from the Virginia Freedom of Information Advisory Council coordinated by the FOIA Office.

Winchester City Employees - All employees of the City of Winchester have a responsibility in FOIA and are encouraged to attend FOIA training.

Role of City Employees in FOIA

Each Winchester City Employee has a role in adhering to FOIA and the operations of the City of Winchester.

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 if the request does not require a routine response. It is imperative that the City of Winchester and the FOIA Officer respond to the requests efficiently and timely.

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 Winchester 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.

If a request is made for a very large number of records, and the staff member or FOIA Officer feels that the records cannot be provided within 12 working days without disrupting other organizational responsibilities, the City may petition the court for additional time to respond to the request. However, FOIA requires that the City make a reasonable effort to reach an agreement with the requestor concerning the production of the records before going to court to ask for more time.

Commonly Used Exemptions

The [Code of Virginia](#) allows any public body to withhold certain records from public disclosure. The City 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))

All other exemptions provided for under the Act may be exercised by the City if deemed lawful and appropriate.

FOIA Departmental Contact Procedures for Non-Routine Requests

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. With the exception of records excluded as Work Product or Attorney Client Privilege or records which are precluded from disclosure by law (does not include the exercise of FOIA exemptions), under no circumstances shall any documents be withheld from the FOIA Officer, the City Attorney, or the City Manager.

In the event that 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. With the exception of records excluded as Work Product or Attorney Client Privilege or records which are precluded from disclosure by law (does not include the exercise of FOIA exemptions), under no circumstances shall any documents be withheld from the FOIA Officer, the City Attorney, or the City Manager. The FOIA Officer will return records to the Departmental Contact after the FOIA request has been completed.

Each Departmental Contact or Winchester 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/Winchester City employee must reply in writing or via e-mail 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 the Department Contact believes that information from records should be redacted, the Departmental Contact must discuss this with the FOIA Officer, who will determine appropriate redactions. Then, the Departmental Contact must take care of the redactions before submitting the documents to the FOIA Officer for distribution.

Charges

FOIA makes provisions for local government agencies to charge for requested records, yet charging for records is not mandatory. The Winchester FOIA Office makes reasonable charges for the actual costs incurred in accessing, duplicating, supplying, or searching for requested records (excludes time spent redacting information). 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 Winchester 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.

With regard to the cost of providing records, §2.2-3704 of the Code of Virginia provides as follows:

*F. 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.** The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, **such charges shall not exceed the actual cost** to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.*

*G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, **not to exceed the actual cost** in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.*

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$ 200, the public body may, before continuing to process

the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

1. 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.

The Winchester FOIA office may charge for the following:

- *Copies*
- *Labor*
- *Postage*

If the 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 Winchester will request a 50% 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.

FOIA Office Resources

The Winchester 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.

Approved



Dale Iman, City Manager