

Freedom of Information Act (“FOIA”)

The Primary State Law Governing
Citizen Access to Public Records
and Meetings of Public Bodies

Freedom of Information Act

- The Act's objective is to provide citizen and media access to public records and meetings of public bodies.

Public Records

- The general rule is that all public records are open to public inspection and copying.
- The Act applies to existing documents. The Act does not require the City to answer questions or to create documents.

Public Records

Public records include “all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

Public Records

Examples

- E-mail
- Video recordings
- A note written with a crayon on a napkin
- Computer data
- Draft documents

Any document or recording of any kind, used in the transaction of public business and possessed by the City, its officers, employees, or agents.

Requests for Documents

Any Virginia citizen who is not in jail or prison, or any member of the press, may make a FOIA request. If you receive a request for documents from a non-citizen who is not a member of the press, or from an inmate or a prisoner, you are not legally required to respond.

Requests for Documents

- A request for documents need not be in writing, and the requestor is not required to cite the Act or refer to the request as a FOIA request. If a Virginia citizen or member of the press asks for a document, she has made a FOIA request.
- The motive of the requestor in making the request is irrelevant under the Act, even if the request is made solely to harass the City or to impede its daily operations.

Requests for Documents

- The requestor must identify the records she seeks with “reasonable specificity.”
- Example: A request for “anything that might help me when I sue the City” is not reasonably specific, but a request for “any documents referencing street repairs since 1995 on the 2600 block of Atlantic Avenue” is reasonably specific.
- If you have questions about what documents are sought, you may ask the requestor for clarification.

Responses to Requests for Documents

Within five working days of your receipt of the request...

- Provide documents
- Withhold documents and cite exemptions in writing
- Provide some and withhold some, citing exemptions in writing
- Notify in writing of need for additional seven days
- Request a deposit if you conclude that the cost to respond to the request will likely exceed \$200

Costs

- Actual and reasonable cost incurred in accessing, duplicating, supplying or searching for the requested records
- Search time should be assessed at the lowest compensated hourly rate of the employee who has the sufficient degree of familiarity with the requested documents that will enable an efficient search.

Exclusions

- The Act contains a list of more than eighty categories of documents that are excluded from the Act's mandatory disclosure provisions.
- Unless another provision of state or federal law explicitly prohibits the release of a document, you have discretion as to whether to invoke the exclusion.
- Exclusions must be narrowly construed.

Examples of Exclusions

- Personnel records
- Medical and mental health records
- Documents protected by the attorney-client privilege
- Certain records about the award of a City contract (prior to award)
- Appraisals and cost estimates of land subject to purchase or sale by the City (prior to the sale or purchase)
- Documents created *exclusively* for use in a closed meeting
- Documents for which disclosure is explicitly prohibited by federal or state law

Enforcement

- Anyone who believes that a public body or public official has violated the Act may file suit in general district or circuit court.
- The case must be heard within seven days of filing.
- The public body has the burden of establishing by a preponderance of the evidence that a record is exempt from the requirements of the Act. Any failure of a public body or official to follow the procedures established in the Act shall be presumed to be a violation of the Act.

Enforcement

- If the court finds that the Act was violated, the court may award an injunction against repeated violations, and the court may award attorney's fees.
- If the court determines that a public official willfully or knowingly violated the law, the court is *required* to impose against the official a civil penalty of at least \$100 but not more than \$1,000 for a first offense and a penalty of at least \$500 but not more than \$2,500 for subsequent offenses.

Public Meetings

- The Act requires that all meetings of public bodies be open to the public, and that notice of those meetings be given.

“Meeting”

- A “meeting” is any gathering of three or more members of a public body during which public business is discussed (unless the public body has less than four members, in which case a gathering of two or more members would constitute a “meeting”).
- The term “public body” includes committees and subcommittees, so if the Parks and Recreation Commission creates a subcommittee that has only three members, then a gathering of two subcommittee members (to discuss public business) would be a “meeting.”
- The term “meeting” does not apply to gatherings of only staff members.

Notice of Meetings

- Public bodies must give notice of the date, time, and location of its meetings “by placing the notice in a prominent public location at which notices are regularly posted **and** in the office of the clerk of the public body.”

Notice of Meetings

- Must be posted at least three working days prior to the meeting, unless it is a special or emergency meeting.
- “Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provide members of the public body conducting the meeting.”

Closed Meetings

A closed meeting is a meeting from which the public is excluded.

Closed meetings may only be held for purposes authorized by the Act.

Strict procedures must be followed.

Questions?

- Deputy City Attorney Rod Ingram (385-8212)
- Freedom of Information Specialist
Nancy Bloom (385-4052)