

FREEDOM OF INFORMATION ACT (FOIA)
Policies and Procedures

Policy Title: FOIA Policy - Procedures and Guidelines	Policy Number:
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1.0 Purpose

The purpose of this policy and procedure is to provide guidance for Stafford County employees to process requests for public records in accordance with the Virginia Freedom of Information Act (FOIA), Virginia Code §§ 2.2-3700 et seq.

2.0 Policy

It is the policy of the County of Stafford that non-exempt public records of the County be provided when requested consistent with the Virginia Freedom of Information Act (“FOIA”), this policy, and other applicable law. “The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government,” and “[a]ny exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.” (§ 2.2-3700)

3.0 Definitions

Public Records: The Code of Virginia defines public records as “...all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and 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.” In other words ANY form of documentation conducted in operation of public business.

Department FOIA Officer: The designee of each department responsible for coordinating the collection and routing of responsive documents to the County FOIA Officer and/or the County Attorney’s Office for final processing to the requester.

County FOIA Officer: Currently the Administrative Assistant to the County Administrator, the County FOIA Officer acts as a point of contact between staff and citizens about general FOIA procedures, and logs records of all completed FOIA requests. The County FOIA Officer disperses FOIA requests to potential responsive departments, collectively provides documents for review to the County Attorney’s Office, and coordinates with the requester for final production of the documents.

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FOIA Request: Any formal or informal request for information or documentation by a citizen of the Commonwealth of Virginia. (Note: the terms “FOIA” or “Freedom of Information Act” do not need to be stated to qualify for the FOIA request proceedings)

4.0 Procedures

4.1 FOIA Officer – Designation and Authority

Constitutional Officers are designated as the FOIA Officers for their individual offices/ departments for records.

Constitutional Officers and Department heads may designate persons under their respective supervision to perform the duties of FOIA Coordinator.

The Administrative Assistant to the County Administrator has been designated as the FOIA Officer for all County records.

Each FOIA Coordinator/Officer shall have the authority to implement procedures to administer the FOIA process so long as they are consistent with this policy, FOIA, and all other applicable law and County policy.

4.2 FOIA Officer Responsibilities

Each FOIA Coordinator/Officer shall:

Be familiar with FOIA and the responsibilities therein.

Perform duties consistent with FOIA and this policy, including accepting and processing requests and approving grants and denials within applicable deadlines;

Accept FOIA requests, determine the cost to comply, gather responsive public records, review or perform the separation or deletion of exempt information from non-exempt information, calculate fees, and transmit responses;

Retain records of FOIA requests and court appeals in accordance with the Library of Virginia requirements;

Consult with the County Attorney’s Office and any applicable department/office as necessary to ensure compliance with FOIA.

4.3 Department/Office Responsibilities

Failure to respond promptly and properly to a FOIA request may subject the County to Court action and monetary damages. Each department/office shall ensure that its employees:

Immediately forward any request for public records to the County FOIA Officer via email,

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hand-delivery, or other immediate delivery method and confirm receipt of same;

Promptly respond to internal requests regarding FOIA;

Provide the FOIA Officer initial estimates of time and costs required to search for, examine, and copy the requested public records in the manner requested by the FOIA Officer prior to starting the work and, upon completion, provide a written account of the actual time spent and costs incurred;

Inform the FOIA Officer if the employee believes any of the requested records are available on the County's public internet sites and identify the specific internet address of the records. The employee need not provide those records to the FOIA Officer for production unless requested;

Search for and retrieve public records as necessary to respond to a FOIA request. FOIA does not require the County to answer questions, to make a compilation, summary, or report of information, or to create a new public record to respond to a request. However, the County must produce existing County public records, including those residing in a computer database, upon request;

Advise the FOIA Officer of appropriate citations for redactions, exemptions, and omissions;

Consult with the County Attorney's office and any applicable office/department as necessary to ensure compliance with FOIA and any applicable record restrictions;

Accommodate or assist a person with a disability who requests public records; but is unable to make a written request.

If a verbal, non-written request is received for information that the employee believes is publicly available on a County's internet site, where practicable and if agreeable to the requester the employee may satisfy the request by informing the requester of the internet address where the requested records may be found. This does not relieve the County of its responsibility to respond to a FOIA request unless the requester agrees to accept the internet address in lieu of a written request.

4.4 Requesting Public Records

A person requesting to obtain a copy of or inspect a County public record is encouraged to do so in writing but is not required to do so. The request must, however, describe the public record sufficiently to enable the County to find the public record. The request must include the name and the mailing address of the requester or other information sufficient to contact the requester and transmit a response.

If a request is too vague to identify or find the public record, the FOIA Officer shall contact

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the requester for clarification. A clarification or amendment of a request is encouraged to be in writing and shall be considered a new request subject to the full time permitted for response under the FOIA. The FOIA Officer shall document the amendment for the file if the requester does not make the amendment in writing.

The requester may stipulate that the public records be provided on non-paper physical media, electronically mailed, or otherwise electronically provided in any format regularly used by the County. For security of the County's information technology systems, a requester is not permitted to provide their own media.

A person has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis (for example, board minutes, or agendas). Subscription requests are valid for up to six months at the request of the subscriber and can be renewed. A subscription fee schedule shall be generated as necessary by the FOIA Officer, taking into account the medium, volume, and frequency of issuance.

A written request made by facsimile, electronic mail, or other electronic transmission is not deemed received until the next business day after the electronic transmission is received by the custodian or FOIA Officer (this rule applies to oral requests as well). If a written request is sent by electronic mail and delivered to a spam or junk-mail folder of the County, the request is not deemed received until the next business day after the County's record custodian or FOIA Officer first becomes aware of the written request. The FOIA Officer shall note both the date and time a written request is delivered to the spam or junk-mail folder and the date and time the County first becomes aware of that request.

An individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility is not entitled to make a request under the FOIA. (Va. Code § 2.2-3703 (C))

4.5 Oral Requests for Public Records

Generally, an oral request does constitute a valid request for public records under FOIA and the person making an oral FOIA request may be asked to make the request in writing but if the requestor refuses to make the request in writing it must still be processed. In such an event the person who receives the request should:

- a) Make a written record of the request for County files;
- b) Ask the requestor for their name, legal address and contact information for FOIA response and/or clarification purposes; and
- c) Provide the written record of the request to the FOIA Officer as soon as possible.

If a verbal, non-written request is received for information that an employee believes is publicly available on the County's internet site, the employee shall ask the requester if

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they will accept that information in response to their request and then inform the requester of the internet address where the information may be found.

4.6 Processing Requests for Copies of Public Records

The FOIA Officer shall identify the department/office that may have the requested records, notify them of the due date for response, and request an estimate of the time and cost to search for, examine, and copy the records for the lowest-paid employee(s) capable of doing so in accordance with the fee components listed in the policy.

The FOIA Officer shall calculate the estimated cost of responding to the request based on the estimated invoices received from the employee(s) and shall determine whether a deposit will be required (in cases where the estimated cost exceeds \$200). This determination must be made as soon as practical but in no case should it exceed 3 days from the date of the request.

If the FOIA Officer knows or has reason to know that all or a portion of the requested records are publicly available on the County's internet site, the FOIA Officer may not need to collect the records that are available on the internet site if the requestor agrees to accept the specific internet address for the records in lieu of further response.

Upon receiving the requested records, the FOIA Officer will request the assistance of the County Attorney's Office to review and recommend redactions or omissions appropriate under FOIA, and to ensure compliance with applicable law. When submitting documents for review by the County Attorney's Office, PDF format is preferred, when possible unless the requestor has asked for production in a different format.

When the requested records are ready for release, the FOIA Officer shall calculate the final costs and prepare and transmit a response to the requester as provided in this policy that shall identify costs in the form prescribed by FOIA, and redactions or omissions along with the applicable exemptions.

5.0 Retention of FOIA Requests and Appeals

5.1 The FOIA Officer at the departmental level shall maintain a chronological file of all FOIA requests for three years plus one day after the date the request has been completed by the County (this policy does not relieve you from compliance with any Library of Virginia document destruction requirements), including a copy of all responses, invoices, estimates, originals or copies of all public records produced, both with and without redactions, and copies or originals of omitted records that are responsive to the request (omitted records may be maintained in the applicable department/office, as appropriate). The departmental FOIA Officer may retain the originals or copies of public records electronically.

5.2 If the requester fails to pay the costs due or fails to pick up the copies within one month (30 days), the request shall be deemed abandoned, any amounts paid by the requester

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shall be forfeited to the County, and the originals or copies of public records may be recycled, destroyed, or returned to the processing department/office, as appropriate and in accordance with all legal requirements (i.e. Library of Virginia document retention and destruction requirements).

- 5.3 If a legal action or challenge is commenced regarding the County’s response to a FOIA request the FOIA Officer shall retain the relevant records until the County Attorney’s Office informs the departmental FOIA Officer that the records no longer need to be retained.

6.0 Common Exemptions and Special Requests

Requests for certain types of public records may require special handling or redactions. This section contains some examples of frequently used FOIA exemptions for reference but is not a complete list. If a County employee has questions about the types of record exemptions, they should contact the County Attorney’s Office for advice.

6.1 Personnel File/Employee Information (Virginia Code §2.2-3705.1(1))

Employees may obtain access to their own personnel files. The law also imposes other response requirements upon the County, including protecting certain kinds of public records that might be found within personnel files. Requests for personnel files or other employee information should be referred directly to Human Resources.

If personnel file/employee information requests are made in the course of a grievance or other labor arbitration or administrative proceeding, the request may have to be responded to in accordance with the rules and procedures for that proceeding, but may also be subject to disclosure under the FOIA. These requests should be referred to the County Attorney’s Office.

6.2 Tax Records and/or information obtained in tax related duties (Virginia Code §58.1-3)

Tax information submitted to include information submitted in a tax related transaction or during the performance of tax related duties is exempt from disclosure under FOIA.

6.3 Legal Advice/Memoranda (Virginia Code §2.2-3705.1(2-3))

Written advice and/or memoranda provided by legal counsel is exempt from disclosure under FOIA.

6.4 Closed Meeting Records (Virginia Code §2.2-3705.1(5))

Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to Virginia Code §2.2-3711 are exempt from disclosure under FOIA.

6.5 Contract Records During Negotiation (Virginia Code §2.2-3705.1(8 & 12))

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All contract negotiation related records are exempt from disclosure under FOIA during the negotiation phase prior to contract award or cancellation.

6.6 Trade Secrets/Proprietary Records Submitted to the County (Virginia Code §2.2-3705.6)

Information or public records submitted to obtain a contract, license, or some other benefit from the County generally are not exempt from disclosure under the FOIA but properly identified trade secrets and/or proprietary records can be protected. A County employee that has a question about whether a public record falls under this exemption should contact the County Attorney's Office for advice.

6.7 Public Records Governed by Other Statutes

Some public record requests are governed by other statutes outside of FOIA that may require specific redactions or processing. For example, public records that disclose the social security number of an individual or their financial account information (Virginia Code §2.2-3808.1). Other statutes may require specific information be disclosed or be disclosed at a certain time. For example, criminal records (Virginia Code §2.2-3706), or records related to an ongoing contract negotiation (Virginia Code §2.2-4342).

6.8 Creation of Public Records/Reports

The FOIA does not generally require the County to create public records, including reports, in response to FOIA requests. However, the County must, to the extent possible, provide requested records in their original format if requested.

6.9 Subpoenas

Subpoenas are a court order mandating that an individual provide documents or appear for a deposition or court. Subpoenas operate under completely different rules than a FOIA request and a County employee who received a subpoena must immediately deliver it to the County Attorney's Office for review.

7.0 Request Requiring Significant Staff Time to Complete

If the FOIA Officer receives a request that will require significant staff time to complete, the FOIA Officer may communicate with the requester to explain the breadth and cost of the request and ask if the requester would like to narrow the request or break the request into parts. The FOIA Officer must obtain an agreed modification from the requester for any revision to the original request. If the requester does not wish to narrow the request and the FOIA Officer has reason to believe that the County will have difficulty responding to the request within the time period set forth in the FOIA, the FOIA Officer should inform the requester of the estimated time it will take and the reason, and seek the requester's agreement to a timetable for delivery of the response and the payment of the applicable costs. If negotiations with the requester do not result in an agreement for production the FOIA Officer should immediately notify the County Attorney's Office so an extension pursuant to court order may be sought.

8.0 Deposits

- 8.1 The County may require a deposit prior to processing a FOIA request if the estimated fees exceed \$200. To preserve public resources, the County generally requires a deposit when permitted under FOIA. The FOIA Officer should determine as soon as possible whether a request requires a deposit. The notice requiring a deposit must be included in the County's initial response and should be provided prior to any notice of a 7-day extension.
- 8.2 When a deposit is required, the FOIA Officer shall send a deposit letter containing:
1. the total estimated fee in the standard form for detailed itemization of costs;
 2. that the request will not be processed until the deposit is received;
 3. that the actual final fee may be greater or less than the estimate and that if the balance of actual final fee exceeds the deposit the requester is still liable for the actual costs incurred but should the deposit amount exceed actual costs the excess amount will be returned to the requester.
- 8.3 The period of time to respond to the request is tolled from the date the deposit notice is sent until the deposit is paid which may also include the time for a check to clear.
- 8.4 If the County receives a request from an individual who has not paid for copies of public records collected for a prior request that is more than 30 days overdue, the FOIA Officer shall require payment of the previous amount due before the new request is processed. This will not relieve the requestor from the need to pay a deposit should the new request be estimated to exceed the amount of \$200 to process.

9.0 Responses

- 9.1 Unless otherwise agreed to by the requester, the FOIA Officer shall provide a written response to all requests within five business days after the request is received doing one of the following:
- a) Providing the records requested in their entirety.
 - b) Notifying the requester that the County is withholding all of the records requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Virginia Code that allows the County to withhold the records.
 - c) Notifying the requester that the County is providing some of the records that were requested, but withholding other records. The County cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the County must redact the portion of the record that may be withheld, and provide the remainder of the record. The County must also provide a written response stating the specific section of the Virginia Code that allows portions of the requested

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records to be withheld.

- d) Informing the requester in writing that the requested records cannot be found or do not exist (if the County does not have the records requested). However, if the County knows that another public body has the requested records, the County must also include in the response the contact information for the other public body in possession of the requested records.
- e) If it is practically impossible for the County to respond to the request within the five-day period, the County will state this in writing, explaining the conditions that make the response impossible. This will allow the County seven additional working days, for a total of twelve days, to respond to the request.

9.2 If the request is for a very large number of records, and the County believes that it cannot provide the records within twelve working days without disrupting its other organizational responsibilities, the County may petition the circuit court for additional time to respond to the request. Prior to petitioning the court, FOIA requires that the County make a reasonable effort to reach an agreement with the requester so the FOIA Officer must make an attempt to reach an agreement concerning the time for producing the records prior to contacting the County Attorney to seek a Court ordered extension.

10.0 Fee Calculation

10.1 Standard Form for Detailed Itemization of Fees

The Department FOIA Officer shall use a standard form for detailed itemization of fees that clearly lists and explains the allowable charges for each of the six fee components that compose the total fee used for estimating or charging purposes.

(Please see attachments for standard fillable forms)

10.2 Fee Components

Pursuant to Virginia Code § 2.2-3704.1, 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. All charges for the supply of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of Virginia Code § 2.2-3704

- a) FOIA allows the County to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- b) If the County estimates that it will cost more than \$200 to respond to a request, the County will require the requester to pay a deposit, not to exceed the amount of the

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estimate, before proceeding with the request. The five (5) days that the County has to respond to the request does not include the time between when the County asks for a deposit and when the deposit is paid.

- c) All deposits shall be paid by check or money order made payable to Stafford County and delivered to the County Administrator's Office. Checks and money orders will be held and only deposited once the request is complete. Any outstanding balance due must be paid before or at the time the responding records are released. Any balance remaining from the deposit shall be returned to the requester.
- d) Responses to FOIA requests that require 30 minutes or less of an individual Board member, public officer/official, or staff member time, will not be charged.
- e) The fee charged for responses by Board members and public officials/officers shall be based upon the individuals' pay as a County official and shall not take into account any non-County employment. His/her time shall be charged based on the following formula:

(FOIA response fee) = (Time to respond in hours) X (Yearly compensation)/(52 weeks X 40 hr/wk)

- f) Time of officers, department heads, and staff who are paid hourly, shall be charged based on the following formula:

(FOIA response fee) = (Time to respond in hours) X (Hourly pay)

- g) Time of officers, department heads, and staff who are salary, shall be charged based on the following formula:

(FOIA response fee) = (Time to respond in hours) X (Yearly Salary)/(52 weeks X 40 hr/wk)

- h) Fees charged for supplies, duplications, etc. shall be as follows:
 - a. Copies: \$.02 per page
 - b. Compact Disc: \$.30 per C.D.
 - c. Mail: Actual cost to mail the request
 - d. Documents from GIS: See GIS fee schedule
- i) The County is to take all reasonable precautions to keep staff time and cost at a minimum, including using lower paid staff members capable of retrieving records to respond to a request.
- j) Each department is responsible for producing their own invoices to the County FOIA officer. There are three different cost forms that may be produced:**
 - a. Invoice: Deposit for FOIA Request These are to be produced in instances where the requester has asked for a large number of documents. An estimate should be provided before work is done and the estimated cost for producing documents exceeds \$200.
 - b. Invoice: These shall be produced with the documents responsive to a

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request and payment is due upon the receipt of the documents by the requester. In this situation, invoices are not to exceed \$200.

- c. Estimated Cost Itemization: These are produced prior to the production of documents and at the requester's wish. In this instance, if a citizen wishes to cancel a request and avoid any further charges, they must do so prior to completion of their FOIA request. The production of this form to the requester does not change or toll the five-day FOIA response deadline that government employees are bound to respond to.

Please note that if a request is made to have an invoice provided before any work is done, **no matter the cost to the requester**, one must be provided. If the citizen does not respond to the production of the estimated invoice, after thirty days, the request will be deemed to be withdrawn in accordance with 2.2-3704(F)