

**Rights & Responsibilities:
The Rights of Requesters and the Responsibilities of
Fairfax County Government
under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located §§ 2.2-3700 through 2.2-3715 of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of certain media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned 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.

The law provides that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. 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.

Your FOIA Rights

1. You have the right to request to inspect or receive copies of public records, or both.
2. You have the right to request that any charges for the requested records be estimated in advance.
3. If you believe that your FOIA rights have been violated, you may file a petition that reasonably specifies the circumstances why you believe your FOIA rights and privileges have been violated. This petition may be filed in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for records from Fairfax County Government

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing; nor do you need to specifically state that you are requesting records under FOIA.
 - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." "Reasonable specificity" does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general

questions about the work of the County or any County agencies; nor does it require the County to create a record that does not exist.

- You may choose to receive electronic records in the format used by County of Fairfax in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process; we may need to discuss your request with you to ensure that we understand what records you are seeking.

Fairfax County Government's Responsibilities in Responding to Your Request

- Fairfax County must respond to your request within five working days of receiving it. "Day One" is considered the first working day after your request is received. The five-day time period does not include weekends, holidays, or days when the County Government is closed.
- You do not have to state why you want the records before we respond to your request. FOIA does, however, allow public bodies to require you to provide your name and legal address prior to processing your request.
- In most circumstances, FOIA requires that a public body make one of the following responses to your request within the five-day time period:
 - 1) We provide you with the records that you have requested in their entirety.
 - 2) We withhold all the records that you have requested, because all the records are subject to a specific statutory exemption. If all the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records that are exempt and state the specific section of the Code of Virginia that authorizes that exemption.
 - 3) We provide some of the records that you have requested, but exempt other records. We cannot redact an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that is exempt and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows us to exempt portions of the requested records.
 - 4) We inform you in writing that the requested records cannot be found or do not exist. However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.

- 5) If it is practically impossible for the County to respond to your request within the five-day time period, we must state this in writing, explaining the conditions that make the response impossible. This provides the County seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records or the nature of the request is such that the County cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Costs

- The County may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. The County may not 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 the County cannot exceed the actual cost of duplication.
- You may have to pay for the records that you request from Fairfax County. FOIA allows us to charge for the actual costs of responding to FOIA requests. This may 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.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five working days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront or give you the opportunity to modify your request to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, Fairfax County may require payment of the past-due bill before it will respond to your new FOIA request.

Types of records

The following is a general description of records types held by Fairfax County:

- administrative
- election
- fiscal
- land development
- legislative
- medical

- mental health
- personnel
- procurement
- public housing
- public safety
- public works
- social services
- tax

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. Fairfax County commonly withholds certain records, examples of which are listed below, but there are multiple other exemptions that exist under FOIA:

- Personnel information (§ 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 (§ 2.2-3705.6(10));
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12));
- Records of criminal investigations (§2.2-3706(B));
- Tax records (§58.1-3);
- Health records (§ 2.2-3705.5(1));
- Appraisals and cost estimates of real property subject to a proposed sale, purchase, or lease (§2.2-3705.1 (8)); and
- Social service records (§63.2-102 through §63.2-105).

Policy regarding the use of exemptions

Because the exemptions established under FOIA exist to protect a compelling public interest (such as privacy of individuals, criminal investigations, or the County's bargaining position in an ongoing negotiation or discussion), it is inevitable that the County will rely on exemptions in many cases. These exemptions promote the efficient and prudent management of public affairs and should not be viewed as conflicting with the County's commitment to VFOIA and transparent and open government.