



## Administrative Regulations

### Office of the Mayor

**Title:** VIRGINIA FREEDOM OF INFORMATION POLICY

**A.R. Number:** 3.1 **Effective Date:** 2/1/2007 **Page:** 1 of 7

**Supersedes:** Virginia Freedom of Information Act Policy **A.R.:** 3.1 **DATED:** 9/1/2004

#### I. PURPOSE

The purpose of this policy is to:

- A. Assist City agencies in meeting statutory freedom of information disclosure mandates by requiring the designation of specific personnel to handle freedom of information requests;
- B. Increase the availability of City government information to the public by providing a procedural framework within which City agencies shall provide requested City records;
- C. Meet most of the needs of the public and the media by developing in designated personnel a heightened ability to manage freedom of information requests; and
- D. Establish systems to record the cost to the City of responding to freedom of information requests and to charge requesters for those costs to the extent permitted by state law.

#### II. POLICY

- A. To further the purpose expressed above, City employees shall follow the spirit and requirements of the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700—2.2-37143 ("VFOIA"). VFOIA requires the release upon request of all non-exempt public records as defined in the Act to members of the public. Although VFOIA does not prohibit the release of any public record, it permits the City to withhold public records in certain limited circumstances as enumerated in the Act.
- B. Using the procedures outlined below, City employees shall record the cost to the City of responding to freedom of information requests and charge the requester for the City's cost in "accessing, duplicating, supplying, or searching for the requested records" to the extent that Section 2.2-3704(F) of the Code of Virginia allows.

#### III. PROCEDURE

##### A. General

1. Records Retention - State law requires City employees to preserve records that document "a transaction or activity by or with any public officer, agency or employee." Va. Code Ann. § 42.1-77; *See* A.R. 7.2 concerning Records Retention for guidelines on complying with the Virginia Public Records Act, Va. Code Ann. §§ 42.1-70—42.1-91.
2. Electronic Mail - Records preserved in electronic media, including but not limited to electronic mail, are subject both to records retention requirements and VFOIA. *See* A.R. 2.5 concerning Electronic Media Systems for guidelines on the use of electronic media systems, including but not limited to electronic mail.
3. Disclosure Required - Unless a specific exclusion from its requirements applies, VFOIA requires the disclosure to Virginia citizens of records "prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business." Va. Code Ann. § 2.2-3701.



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### B. Agency Head's Role

This policy intends to promote an increased responsiveness to freedom of information requests. Consequently, each Agency Head shall read and familiarize him/herself with VFOIA. Further, each Agency Head shall designate a VFOIA representative as provided below. Each Agency Head shall recognize that freedom of information requests are time-sensitive and shall assist his agency's VFOIA representative in providing a timely, appropriate response to every freedom of information request.

### C. Designated VFOIA Representative

Each Agency Head shall designate a least one member of his staff as that agency's VFOIA representative and shall report the names of all VFOIA representatives or alternates to the Office of the Chief Administrative Officer upon designation. The Office of the Chief Administrative Officer shall maintain a list of VFOIA representatives and shall audit this list annually to ensure that it remains current. The VFOIA representative shall be primarily responsible for the agency's response to freedom of information requests it receives from the public and the media. The VFOIA representative shall:

1. Read and familiarize himself with VFOIA;
2. Familiarize him/herself with Virginia statutes applicable to the agency that may expressly forbid the release of certain records, such as some criminal or tax records;
3. Develop and update procedures for responding to freedom of information requests;
4. Train agency employees to recognize freedom of information requests and properly refer them to the agency's VFOIA representative;
5. Receive all freedom of information requests directed to the agency;
6. Act as the point of contact within the agency for freedom of information requests referred to the agency by other agencies or by the Office of the Chief Administrative Officer;
7. Maintain appropriate records concerning each freedom of information request in accordance with Section III (F) of this policy;
8. Train alternate VFOIA representatives to handle time-sensitive freedom of information requests when the designated VFOIA representative is out of the office;
9. Respond in a timely fashion to freedom of information requests in accordance with the agency's established procedures; and
10. Consult with the appropriate member of the Office of the City Attorney, as necessary, whenever a question arises regarding freedom of information requests or procedures.



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### D. Agency Procedures

Each agency shall develop and follow procedures for responding to freedom of information requests directed or referred to the agency. Although each agency should develop procedures that work best for the agency, such procedures shall, at a minimum, include the following elements:

1. Intake Forms - Agencies shall maintain a form on which either a walk-in requester or a City employee taking a request over the telephone may record the elements of the request.
2. Referral - City personnel shall refer each request to their agency's VFOIA representative on the same day they receive the request because such requests are time-sensitive.
3. Statutory Requirements - The VFOIA representative shall follow all statutory VFOIA requirements in handling the request, particularly those found in Va. Code Ann. § 2.2-3704.
4. Response Time - The VFOIA representative shall respond to the request within five (5) working days of the agency's receipt of the request in the manner specified by Va. Code Ann. § 2.2-3704(B), or unless otherwise provided by the statute.
5. Agency Review of Responsive Records - Once the agency has amassed all of the records that respond to the request, the VFOIA representative shall review those records (i) to make a record of what the agency is providing the requester and (ii) to identify any records that the VFOIA representative believes are excluded from the law's disclosure requirements.
6. Consultation with City Attorney - In general, when a citizen of Virginia or media outlet with circulation in Virginia requests a record, VFOIA requires the City to provide the requester with the record. However, the City occasionally receives requests for records that may be excluded from VFOIA's disclosure requirements. Should the VFOIA representative believe that records may be exempt from disclosure, the VFOIA representative shall adhere to the following guidelines in bringing such records to the attention of the Office of the City Attorney:
  - a. The VFOIA representative shall not send a request to the Office of the City Attorney before gathering the records that respond to the request.
  - b. Upon identifying records that may be exempt from disclosure, the VFOIA representative shall immediately contact the lawyer in the Office of the City Attorney that represents the VFOIA representative's office or agency.
  - c. The VFOIA representative shall promptly provide the lawyer with a copy of (i) the request and (ii) the record or records that the VFOIA representative feels may be exempt from the law's disclosure requirements. The VFOIA representative shall not send all of the records generated in response to a voluminous request to the lawyer. Rather, the VFOIA representative shall send the lawyer only those records that he actually has reason to believe may be excluded from the law's disclosure requirements.



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- d. The VFOIA representative shall allow at least two working days before a response is due to the requester for the lawyer to review the request and the records that may be excluded from the law's disclosure requirements.

E. Charging for Requests

In general, VFOIA allows the City to "make reasonable charges for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records." Va. Code Ann. § 2.2-3704(F). Because the City may incur significant costs in responding to freedom of information requests, VFOIA representatives, in responding to a request, shall charge the requester for the response pursuant to the following guidelines:

1. Records Available on Internet or at Library - Upon receiving a request, the VFOIA representative shall determine if the information is already available to the public on the Internet or at a public library. If so, the VFOIA representative shall contact the requester by the fastest means possible and inform him that the information is available free of charge on the Internet or at a public library. Should the requester decide to seek the records on the Internet or at a public library, the VFOIA representative shall send a letter to the requester confirming the requester's decision.
2. Cost Estimate - If the requested records are not publicly available on the Internet or at a public library, the VFOIA representative shall estimate the cost of complying with the request. Such estimate shall include the following elements where implicated in the response to the request:
  - a. The actual cost of time spent by City employees in searching for, gathering, or redacting records in response to a request. The VFOIA representative shall use the lowest-paid employee capable of performing these tasks. For each employee, this cost shall be the hourly rate of the employee (not including benefits or other overhead costs for that employee) multiplied by the number of hours that employee spends performing tasks in response to that VFOIA request.  
  
(Generally, a requester cannot be charged for an employee's time spent sitting with or supervising the requester's inspection of the records for security reasons. *See* 1989 Op. Att'y Gen. Va. 12.)
  - b. The actual cost of duplication.
  - c. The actual cost of mailing or delivering. This cost shall be the amount expended by the City in mailing or otherwise delivering the records to the requester. (This charge shall not apply where the requester comes and picks up the records.)
3. Communication of Estimate to Requester - The VFOIA representative shall communicate the estimate to the requester by the fastest means possible.
  - a. If the estimated cost of fulfilling the request is less than or equal to two hundred dollars (\$200.00), the VFOIA representative shall inform the requester that payment is due upon delivery of the response to the request.



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- b. If the estimated cost of fulfilling the request is greater than two hundred dollars (\$200.00), the VFOIA representative shall inform the requester in writing that, as authorized by Section 2.2-3704(F) of the Code of Virginia, (i) the City will not continue to process the request until it has received a deposit in the amount of the estimate from the requester, (ii) the City will credit the deposit towards the final cost of supplying the requested records, and (iii) that the statutory period within which the City must respond will be delayed until the City receives the deposit.
4. Invoice of Costs - Upon the completion of the work and duplicating necessary to fulfill a request, the VFOIA representative shall prepare an invoice of the costs. Such invoice shall include all of the applicable elements listed in III (E)(2) above and shall be in a form approved by the Chief Administrative Officer or his designee. The VFOIA representative shall see that the invoice is presented to the requester along with the records responding to his request.
5. Intergovernmental Waiver of Costs - The costs associated with responding to VFOIA requests from governmental entities shall be waived whenever such an entity extends the City reciprocity regarding cost waiver. Costs associated with VFOIA requests from all other governmental entities may be waived at the discretion of the Agency Head. In all cases where costs are waived, an invoice shall be prepared for the purposes of record keeping.
6. Collection of Charges from Requester
  - a. If the requester has made a deposit pursuant to III (E)(3)(b) above, such deposit shall be credited against the invoiced cost. If the deposit is insufficient to cover the invoiced cost, the VFOIA representative shall collect the remainder pursuant to III (E)(6)(b) and (c) below. If any portion of the deposit remains after credited against the invoiced cost, the VFOIA representative shall return such portion to the requester with the response to the request.
  - b. If the requester appears in person either to inspect the requested records or to pick up copies thereof, the VFOIA representative shall collect the charge for the request before providing the requester with access to or copies of the records.
  - c. If the requester requests delivery by mail or electronic mail, the invoice provided with the City's response to the request shall state that the requester has ten (10) calendar days to pay the City the invoiced amount and that the City reserves the right to impose an interest charge of nine percent (9%) per annum and to pursue its standard collection procedures for delinquent accounts after thirty (30) calendar days.
  - d. Pursuant to Section 2.2-3704 (I) of the Code of Virginia, before processing a request for records, the City may require the requestor to pay any amounts owed for previous requests for records that remain unpaid 30 days or more after billing.
7. Charging under Special Circumstances. When a requester requests the reproduction of topographical maps or the production of records from the City's Geographic Information System, the VFOIA representative, in responding to the request, shall follow the special guidelines set forth in Section 2.2-3704(F) of the Code of Virginia in charging for these types of records.



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#### F. Record-Keeping

Each agency shall track the costs in time and money incurred by the City in responding to freedom of information requests. VFOIA representatives shall keep a file containing a copy of the following for each freedom of information request in order to facilitate uniform data collection:

1. Intake Form - Most requesters make their request in writing, and this writing may serve as the intake form for the request. Some requesters request records in person at an agency's offices. VFOIA representatives shall train City employees at the customer service level of their agency (i) to recognize that a person requesting to inspect or copy existing public records or requesting information contained in existing public records is making a freedom of information request and (ii) to ask that requester to fill out an intake form prepared by the agency in a form approved by the Chief Administrative Officer or his designee. City employees may not require requesters to fill out an intake form. If a requester declines to fill out an intake form or is making a request over the telephone, the City employee taking the request should fill out an intake form to create a written record of the request.
2. Estimate - VFOIA representatives shall make their estimate of the anticipated cost of responding to a freedom of information request in a form approved by the Chief Administrative Officer or his designee. The intake form may include space for the appropriate cost estimate information.
3. Communication with Requester - All communication with a requester concerning a request shall be in writing wherever possible. Should a City employee communicate orally with a requester, the City employee shall make a written note of the communication together with the date and time thereof.
4. Response to Request - All responses to a request shall be in writing and should be in the form of a letter.
5. Invoice - All responses to a request shall include an invoice as described in III (E)(4) above.
6. Payment Record - Receipts for payment by a requester should include amount due and amount paid.

Each Agency Head shall file with the Director of Budget and Strategic Planning an annual report indicating the total cost in time and money incurred by that agency in responding to freedom of information requests no later than December 31 of each year. The Department of Budget and Strategic Planning shall conduct annual audits of freedom of information request files in order to gather Citywide data on the costs in time and money incurred by the City in responding to requests and shall present a report on such costs to the Chief Administrative Officer.

#### IV. AUTHORITY

Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700—2.2-3714.

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**V. REGULATION UPDATE**

The Office of the Mayor and the Office of the City Attorney shall be responsible for modifications to this Regulation.

**APPROVED:**



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**MAYOR**