

## **The Rights of Requesters and the Responsibilities of Stafford County under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), found in Virginia Code § 2.2-3700 et seq., guarantees citizens of the Commonwealth and representatives of the 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 purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that its provisions be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

### **Requester's FOIA Rights**

- You have the right to request to inspect and/or receive copies of public records.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in general 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 Stafford County**

- You may request records by 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. Nevertheless, the County would prefer requests to be submitted, in writing, on the attached form.
  - 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 the County a clear statement of what records you are requesting. However, the County 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." This is a common-sense standard. It 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 the County can identify and locate the records that you are seeking.

- You may only request existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to general questions about the work of the County and its public officers, officials, and employees, nor does it require the County to create a record that does not exist.
- You may choose to receive electronic records in any format used by the County 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 the County has 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. We may need to discuss your request with you to ensure that we understand what records you are seeking.
- Stafford County shall comply with the following procedures for processing a FOIA request.
  - FOIA requests should be directed to the FOIA Officer in the County Administrator's Office, as the centralized receiving center for FOIA requests.
    - By mail: County Administrator's Office  
ATTN: Wendy Mallow, FOIA Officer  
PO Box 339  
Stafford, VA 22555
    - Fax: (540) 720-4572
    - Phone: (540) 658-8605
    - E-mail: [wmallow@staffordcountyva.gov](mailto:wmallow@staffordcountyva.gov)
  - After receipt of the request, the FOIA Officer will direct the request to the appropriate County Departments, the Board, and other public officials (as appropriate).
    - Department heads will implement and follow a process for providing FOIA requests to staff in his/her department for response.
  - If FOIA requests are initially received by any County Department, official, or employee, other than the County Administrator's Office, the request shall immediately be forwarded to the County Administrator's Office to follow the same centralized process detailed above.
  - If you have questions regarding accessing records from the County, please contact the FOIA Officer, Wendy Mallow, at (540) 658-8605.

- In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us), or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

### **Stafford County's Responsibilities in Responding to Your Request**

- The County must respond to your request within five (5) working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the County is irrelevant, and you do not have to state why you want the records before the County responds to your request. FOIA does, however, allow the County to ask you to provide your name and legal address.
- FOIA requires that the County make one of the following responses to your request within the five-day period:
  - Provide you with the records that you have requested in their entirety.
  - Withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the County will send you a response in writing. That writing will 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.
  - Provide some of the records that you have requested, but withhold 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 may redact the portion of the record that may be withheld, and will provide you with the remainder of the record. The County will provide you with a written response stating the specific section of the Virginia Code that allows portions of the requested records to be withheld.
  - Inform you in writing that the requested records cannot be found or do not exist (the County does not have the records you want). However, if the County knows that another public body has the requested records, the County will include contact information for the other public body in the County's response to you.
  - If it is practically impossible for the County to respond to your 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 (7) additional working days, for a total of twelve (12) days, to respond to your request.
- If you make a request for a very large number of records, and the County feels that it cannot provide the records to you within twelve (12) working days without disrupting its other organizational responsibilities, the County may petition the circuit court for

additional time to respond to your request. Prior to petitioning the court, FOIA requires that the County make a reasonable effort to reach an agreement with you concerning the time for producing the records.

- Stafford County shall comply with the following procedures for responding to a FOIA request.
  - Staff, within each applicable Department, will provide all responsive records to his/her Department head.
  - All Department heads shall review all submitted, responsive records, ensuring all information required and allowed to be exempted, redacted, or withheld under the FOIA statutes has been excluded or redacted. The Department heads will also appropriately document any information redacted or withheld in accordance with the FOIA statutes.
  - The Department heads will transmit all records to the County Administrator's Office for final coordination. The County Administrator's Office will then transmit all records to the requester.
  - All Board members and other public officials/officers shall respond directly to the County Administrator's Office.
  - If at any time during the process a Department head or the County Administrator's Office has any legal questions about the records, responsiveness, exemptions, or information that shall/may be withheld or redacted, he/she may consult with the County Attorney's Office.
- Delays in responding to a FOIA request.
  - If staff or a Department head needs clarification regarding a FOIA request, and the ambiguity can be cleared up by communication with the requester, the Department head or the County Administrator's Office shall contact the requester.
  - If the Department head determines that he/she or his/her staff will not be able to respond to a FOIA request within the statutory five (5) working days, he/she shall communicate with the County Administrator's Office the need for more time and approximately how long the Department needs to respond to the request.
    - The County Administrator's Office shall communicate the need for an extension in writing, invoking the statutory additional seven (7) working days.
    - If greater than seven (7) days is necessary, the County Administrator's Office shall try to reach a reasonable agreement with the requester for more time. If a reasonable agreement cannot be reached, the County Administrator's Office shall contact the County Attorney's Office to petition the circuit court for additional time.

- Please see the section below about cost and deposits with regards to further possible delays in responding.

### **Costs**

- 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.
- You may have to pay for the records that you request from Stafford County. 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.
- If the County estimates that it will cost more than \$200 to respond to your request, the County will require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five (5) days that the County has to respond to your request does not include the time between when the County asks for a deposit and when you respond.
- 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.
- You may request that the County 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 in an attempt to lower the estimated costs. The statutory time limits provided do not begin to run until you give the County permission to proceed, approving the estimate or by paying the deposit as required above.
- If you owe the County money from a previous FOIA request that has remained unpaid for more than 30 days, Stafford County may require payment of the past-due bill before it will respond to your new FOIA request.
- 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 to you.
- Board members, public officers/officials, and Constitutional officers shall have discretion to determine if his/her individual time spent responding to a FOIA request (in excess of



### **Commonly used Exemptions**

The Virginia Code allows any public body to withhold certain records from public disclosure. Stafford County commonly withholds records subject to the following exemptions:

- Records subject to attorney-client privilege (Virginia Code § 2.2-3705.1(2)) or attorney work product (Virginia Code § 2.2-3705.1(3))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (Virginia Code § 2.2-3705.1(12))
- Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease (Virginia Code § 2.2-3705.1(8))
- Personnel records (Virginia Code § 2.2-3705.1(1))

For a full list of exemptions, *see* Virginia Code § 2.2-3705.1 *et seq.*

### **Policy regarding the use of Exemptions**

- It is Stafford County's general policy to exempt any and all records that are allowed to be exempted, redacted, or excluded from production by law.
- Any record exempt under the Virginia Code, which the custodian of the record has the option of disclosing, shall not be disclosed.