



The Rights of Requesters and the Responsibilities of the Town of Rocky Mount under the Virginia Freedom of Information Act (FOIA)

The Virginia Freedom of Information Act (FOIA), as set forth in § 2.2-3700 et seq. of the Code of Virginia, 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 by, 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 policy of FOIA states 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

- Citizens of the Commonwealth and representatives of the media have the right to request to inspect or receive copies of public records, or both.
- Citizens of the Commonwealth and representatives of the media 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 district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion at foiacouncil@dls.virginia.gov or by phone at 1-804-698-1810.

Making a Request for Records from the Town of Rocky Mount

- 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, the Town 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 Town 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 Town, nor does it require the Town to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Town 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 Town 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. Making a FOIA request is not an adversarial process, but the Town may need to discuss your request with you to ensure that we understand what records you are seeking.
- To request records from the Town of Rocky Mount, you may direct your request or questions to the Town's FOIA Officer, Mark W. Moore. He can be reached by telephone at 540-483-0907 or email at mmoore@rockymountva.org.

The Town of Rocky Mount's Responsibilities in Responding to Your Request

- The Town must respond to your request within five 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 Town is irrelevant, and you do not have to state why you want the records before the Town responds to your request. FOIA does, however, allow the Town to require you to provide your name and legal address.
- FOIA requires that the Town make one of the following responses to your request within the five-day time period:
 1. The Town provides you with the records that you have requested in their entirety.
 2. The Town withholds all the records that you have requested, because all of the records are subject to a specific statutory exemption. If all the records are being withheld, the Town must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld and state the specific section of the Code of Virginia that allows us to withhold the records.
 3. The Town provides some of the records that you have requested but withholds other records. We cannot withhold 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 may be withheld and must provide you with the remainder of the record. The Town must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
 4. The Town informs you in writing that the requested records cannot be found or do not exist (we do not have the records you want). 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 Town to respond to your request within the five-day period, the Town must state this in writing, explaining the conditions that make

the response impossible. This will allow us 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, and the Town feels that we 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 the Town 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

- 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 supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia.
- The Town requires payment for all FOIA inquiries. FOIA allows us 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.
- In addition to fees for personnel time, fees charged for copying and other costs shall be as follows:
 - Copies (8½X11 black & white): \$.08 per page.
 - Copies (other - color and/or sizes up to/including 11X17): \$.15 per page.
 - Copies (other – items in excess of 11X17, as such items generally require specialized equipment to reproduce): \$1.00 per page.
 - A page constitutes one side of a document. A double-sided document counts as two pages.
 - Compact disc: \$1.00 per compact disc.
 - Mail: actual cost to mail the request.
 - Other/specialty items (including audio/video recordings): as determined by responding personnel, based on actual cost.
- If the Town estimates that it will cost more than \$200 to respond to your request, the Town may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that the Town must respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that the Town 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.
- If you owe the Town money from a previous FOIA request that has remained unpaid for more than 30 days, the Town will require payment of the past-due bill before it will respond to your new FOIA request. Unpaid bills beyond 30 days may be referred to a collection agency or attorney.

Commonly Used Exemptions

- The Virginia Code allows any public body to withhold certain records from public disclosure. Commonly used exemptions that the Town may use are:
 - Personnel records (Virginia Code § 2.2-3705.1(1))
 - Records subject to attorney-client privilege (Virginia Code § 2.2-3705.1(2)) or attorney work product (Virginia Code § 2.2-3705.1(3))
 - 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))
 - Records relating to the negotiation and award of a contract, prior to a contract being awarded (Virginia Code § 2.2-3705.1(12))
- For a full list of exemptions, see Virginia Code § 2.2-3705.1 et seq.