

**CITY OF CHARLOTTESVILLE
STANDARD OPERATING PROCEDURE**



Type of Policy: ADMINISTRATIVE	Policy Number: 100-18
Subject: Freedom of Information Act	
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Authorization: Dr. Tarron Richardson, City Manager	
Signature of City Manager: 	Effective Date: 12/18/2019

I. PURPOSE OF POLICY

This policy establishes procedures by which all City departments, offices, and agencies shall comply with the Virginia Freedom of Information Act.

II. ENABLING ORDINANCES/LEGISLATION

Virginia Freedom of Information Act, Virginia Code Section 2.2-3700, et seq.

III. DEPARTMENTS/DIVISION AFFECTED

This procedure applies to all City departments, offices, and agencies.

IV. REGULATION AND PROCEDURES

1. PUBLIC RECORDS REQUIREMENTS

A. Requests Covered by this Policy

This policy establishes the procedures to be followed for all public record requests pursuant to the Virginia Freedom of Information Act (FOIA). The City of Charlottesville recognizes, however, that on a daily basis citizens and members of the media make informal requests for simple public information, such as the phone number of a City official. Such routine requests for information need not be handled as formal FOIA requests unless indicated otherwise by the requester. In any unclear situation, the City employee should ask the requester whether they wish to make a formal FOIA request.

B. Scope of FOIA's Public Record Requirements

1. Public Record Requirements

As a public body, the City of Charlottesville must provide Virginia citizens, newspapers and magazines with circulation in Virginia, and television and radio stations broadcasting in or into Virginia the opportunity to inspect and copy public records unless a statutory exemption applies. FOIA does not require public bodies to create new public records, compile or summarize data, or provide pure information in response to any request. Rather, public bodies must make existing public records open for inspection and copying when those records have been identified with reasonable specificity.

2. Definitions under FOIA for Public Record Requests (Not Meetings)

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 in 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.

A "public body" for purposes of this policy means the Charlottesville City Council, Planning Commission, Board of Zoning Appeals, and all other City boards, commissions, and authorities; each department of the City; constitutional officers of the City; and all committees or subcommittees created by the City Council to perform delegated duties of the Council or to advise the Council. Committees or subcommittees whose membership includes at least two members of the public body shall automatically constitute a public body.

C. Certain Records Exempt from FOIA

All public records are presumed to be open, and may be withheld only if a specific, statutory exemption applies. Although FOIA provides numerous statutory exemptions that may be exercised by the City, those most often relevant to the City are the following:

1. Personnel records containing information concerning identifiable individuals (Virginia Code §2.2-3705.1). This exemption does not apply to the individual who is the subject of the personnel records.

2. Certain criminal investigative, prosecutorial, and noncriminal records maintained by law enforcement agencies (§2.2-3706).

3. Certain investigative, personally identifiable, and other information maintained by the Department of Social Services (§2.2-3705.5).

4. Closed meeting materials that have been recorded or compiled exclusively for use in a lawfully held closed meeting (§2.2-3705.1 (5)).

5. Records relating to the negotiation and award of a contract, prior to a contract being awarded 2.2-3705.1 (12)).

6. Records subject to attorney-client privilege (§2.2-3705.1 (2)) or attorney work product (§ 2.23705.1 (3)).

7. Working papers and correspondence of the City Manager (§2.2-3705.7(2)).

2. REQUESTS FOR PUBLIC RECORDS

A. Positions Responsible for FOIA Compliance

1. Department Directors. Department directors shall designate an employee who will be primarily responsible for receiving and responding to FOIA requests. Department directors shall be responsible for ensuring that responses to FOIA requests comply with FOIA and this policy.

2. Director of Communications. The Director of Communications serves as the City's FOIA Officer pursuant to Virginia Code Section 2.2-3704.2. All FOIA requests should be immediately forwarded to the Director of Communications. The Director of Communications will contact the appropriate Department Head(s) to obtain the documents necessary to fulfill the request. The Director of Communications will contact the City Attorney's Office about any possible statutory exemptions that could apply to requested records or any other legal questions they may have.

3. City Attorney's Office. All employees responsible for responding to FOIA requests shall consult with the City Attorney's Office on any question regarding the legal requirements of FOIA. Before denying any request for records based on a statutory exemption, the Director of Communications must consult the City Attorney's Office to ensure compliance with FOIA.

4. All Employees. All other employees receiving a FOIA request should follow the procedures of their department to ensure that the request is referred promptly to the appropriate, designated individual within the department.

B. Format of Requests

1. Eligibility. Any Virginia citizen, newspapers and magazines with circulation in Virginia, and television and radio stations broadcasting in or into Virginia may request public records simply by asking for records by U.S. mail, fax, e-mail, in person, or over the phone. The requester need not mention FOIA or state that they are making a FOIA request. Virginia citizenship will be satisfied by providing documentation requested by the Director of Communications. In no event shall a City employee seek information regarding U.S. citizenship or immigration status in order to respond to a FOIA request.

2. Reasonable Specificity. The request must identify the records being sought with "reasonable specificity." This does not mean that the requester must specify the volume, number, or location of the records, but simply that the request must be specific enough for the City to identify and locate the records.

3. Clarification. City staff should understand that a requester may not be required to disclose the reason for their request. Staff may, however, ask any questions needed to provide the requester the desired records, clarify the request, or attempt to reach a reasonable agreement about a response to a large request.

3. RESPONSES TO REQUESTS FOR PUBLIC RECORDS

A. Timeframe and Basic Requirements for Responses

1 . Timeframe. The City must respond to a FOIA request within five (5) working days of receiving it. The five-day period does not include weekends or holidays. The five-day period begins on the first working day following the day the request is received by the employee and ends at the close of business on the fifth working day. Any time that elapses between the time the requester is notified of an advance cost determination pursuant to the procedures detailed below and the time the requester responds to that notice shall not be counted in calculating the five working days.

2. One of Five Basic Responses Required. By the fifth working day following receipt of a request, the Director of Communications must provide at least one of the following responses:

a. The records shall be made available to the requester.

b. The requested records will be entirely withheld because their release is prohibited by law or because FOIA gives their custodian discretion to withhold them. A written explanation identifying with reasonable particularity the volume and subject matter of the withheld records and with respect to each category withheld, referencing the code section containing the specific applicable exemption(s), shall be included.

c. The requested records will be provided in part and withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records. A written explanation identifying with reasonable particularity the subject matter of the withheld portions and referencing, with respect to each category of withheld records, the specific code section(s) which authorize the withholding of records, shall be included.

d. The requested records cannot be found or do not exist (the City does not have the records requested). However, if staff knows that another public body does have the requested records, contact information for the other public body must be included in the response.

e. The City cannot determine the status of the records within the five-day period, or it is practically impossible to provide the records within the five-day period. If so, staff shall describe briefly the specific conditions which make a response within the five-day period impossible. In addition, within seven (7) additional working days following the provision of this response, the City must provide one of the substantive responses in paragraphs (a) through (d) above.

3. Other Agreements. The above timing requirements will not apply if the Director of Communications and the requester reach an agreement that the records will be provided later than 5 working days after receipt of the request. In such cases, the Director of Communications must document the agreed upon date for providing the records.

B. Format and Provision of Records

1. Provision of Records (Not Electronic Records). Nonexempt public records will be made available for inspection at City Hall during regular business hours. If the requester wishes to have a copy of the records, the Office of Communications will make the copies available for pick-up at City Hall during regular business hours or if the records are not voluminous, mail them to the requester by first-class mail or by electronic mail.

2. Provision of Records (Electronic Records). Individuals may request copies of any nonexempt public records maintained in an electronic format by the City. Such records shall be reproduced in any tangible medium or format identified by the requester that is regularly used in the ordinary course of business by the City, including posting the records on a website, burning them to a CD, or delivering the records in a personal document format (pdf) through an electronic mail address provided by the requester.

The requester may choose to receive non-exempt electronic records in any format used by the City in the regular course of business. For example, if the requester is requesting records maintained in an Excel database, the requester may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.

C. Costs for Providing Records

1. Basis for Costs. FOIA allows public bodies to make reasonable charges not to exceed the actual costs of responding to FOIA requests in order to ensure that taxpayer funds are used appropriately for public purposes. Specifically, FOIA permits charging requesters for the staff time spent "accessing, duplicating, supplying, or searching for the requested records," and for the costs directly related to supplying the records, such as photocopying costs. Staff time spent on reviewing documents for exclusion pursuant to a FOIA statutory exemption may be charged pursuant to the Virginia Supreme Court's decision in *American Tradition Institute v. The Rector and the Visitors of the University of Virginia*. In addition, the City 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."

2. Particular Charges. The following costs will apply to the provision of records:

a. Copies of documents and print-outs from electronic documents: Five (5) pages or fewer: no charge. Six (6) or more pages: a \$.08 per page charge shall be assessed on the sixth and subsequent pages.

b. Staff time: When 15 minutes or more of staff time is required to access, duplicate, supply, or search for the requested public records, the requester will be charged for the actual time spent by City staff calculated in fifteen minute increments. For example, a response that requires 30 minutes of staff time to retrieve and photocopy documents will incur a charge for 30 minutes, and a response that requires 1 hour of staff time will incur a charge for 1 hour. These charges will reflect the employee's base hourly rate of pay.

c. Materials: For responses provided in an electronic medium, the City will charge the cost of the medium (i.e. CD, DVD, etc.).

3. FOIA Payment Accounts. Payment for FOIA requests may be made by check payable to the City of Charlottesville. Payments shall be made at the Office of the City Attorney. The City Attorney's Office will be responsible for depositing all payments received for FOIA requests with the Department of Finance.

4. Estimates and Deposits. If the requester has asked for an advance determination of the cost of their request, the City shall prepare an estimate and provide it to the requester before proceeding with the request. No further action on the request will be taken on the request, and the five working day period will be suspended, until the requester asks the City to proceed after receiving the estimate. If the cost to fulfill a request is expected to exceed \$200.00, the City will, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. No further action shall be taken until the requester responds, and the requester must agree to pay the estimated amount before any further processing of the request is performed. The five working day period will be suspended until the requester pays the estimated amount. If money is owed from a previous FOIA request that has remained unpaid for more than 30 days, the City may require payment of the past-due bill before it will respond to a new FOIA request.

5. Questions about Permissible Charges. Questions regarding the permissibility of charges should be referred by the Director of Communications to the Office of the City Attorney.

4. COUNCIL BOARDS AND COMMISSIONS

A. Notice

1. Staff Liaisons. Every City Council appointed City Board or Commission will have one full-time employee designated to serve as a staff liaison to the board or commission. The City Manager shall designate the appropriate City Department to provide services to the Board or Commission. The staff liaison shall be designated by the Department Director.

2. Public Notice Requirements. FOIA requires that notice of every Board or Commission meeting be posted both physically and on the City's website. The notice must include the date, time, and location of the meeting.

3. Posting Requirements. The staff liaison shall post a paper notice of the Board or Commission meeting on the public meeting notices wall located in the hallway next to the Neighborhood Development Services Department on the second floor of City Hall. The paper notice shall be posted at least three business days before the date of the meeting.

4. Website Requirement. The staff liaison shall also publish a notice on the City's website calendar at least five business days before the Board or Commission meeting. The website

calendar is displayed on the electronic bulletin board display next to the City Clerk's Office on the second floor of City Hall.

5. Minutes Requirement. The staff liaison shall also produce one set of written minutes for each Board or Commission meeting. The minutes shall include the date, time, and place of the meeting. A list of the Board or Commission members present and absent at the meeting. A brief description of any business matter discussed at the meeting, and a record of any vote taken at the meeting. All votes should include the names of the Board or Commission members and how they voted on the matter (i.e. "ayes" and "nays"). The staff liaison shall present the minutes at the next Board or Commission meeting and, after asking if there are any additions or corrections to the minutes, asking the Board or Commission to vote to approve the minutes.

V. CONSEQUENCES OF VIOLATION OF POLICY

Any employee who intentionally violates this policy is subject to disciplinary action up to and including termination.

Additionally, the Freedom of Information Act provides that any employee who intentionally violates the Act may be subject to a civil penalty.