

# FOIA Rights & Responsibilities:

## The Rights of Requesters and the Responsibilities of the Norfolk Sheriff's Office (NSO) under the Virginia Freedom of Information Act (FOIA)

The [Virginia Freedom of Information Act \(FOIA\)](#), § 2.2-3700 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 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 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**

- You have the right to request to inspect or receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe 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 [Virginia FOIA Council](#) for a nonbinding advisory opinion.

### **MAKING A REQUEST FOR RECORDS FROM THE NSO**

- You may request records by U.S. Mail, fax, email, in person, or over the phone. FOIA does not require your request be in writing, not do you need to specifically state that you are requesting records under FOIA.
  - It may be helpful to both you and the person receiving your request if you 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 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." This asks that you be specific enough so that we can identify and locate the records you are seeking. If we can't identify the records you are requesting, we may need to contact you to better understand what you are looking for.
- Your request must ask for existing records or documents. The Virginia Freedom of Information Act (FOIA) does not require that a governmental body create records, do legal research, or answer questions about the records we might provide.

- You may choose to receive electronic records in any format used by the NSO in the regular course of business.
- FOIA allows the NSO to require that you provide your name and legal address. Please upload your Virginia Identification Card, Driver's License, etc. to the online form.

*To request records from the NSO, please fill out the [form](#) on the NSO website. If you have additional questions, please contact the NSO FOIA officers at [foia@norfolk-sheriff.com](mailto:foia@norfolk-sheriff.com). In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. They Council may be contacted by email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov) or by phone at 804-698-1810.*

## **NSO'S RESPONSIBILITIES IN RESPONDING TO YOUR REQUEST**

- The NSO must respond to your request within five business days of receiving the request. Day one is considered the day after your request was received. Weekends and holidays are not included in the five-day period.
- As outlined in Virginia Code 2.2-2704 (B) section of the Virginia Freedom of Information Act, the NSO is required to reply to your request within five business days. The reply may be one of the following responses:
  1. **The requested records are being entirely withheld.** We also must cite the specific section of Virginia law that authorizes us, or mandates us, to withhold the records.
  2. **The requested records are being provided in part and are being withheld in part.** It is our responsibility to inform you of the specific section of Virginia law that authorizes us, or mandates us, to withhold the records.
  3. **The requested records could not be found or do not exist.** This response will be necessary in cases where no records are held by the Norfolk Sheriff's Office, or when records have been lost or damaged, such as by fire or flood. However, if we learn that the records might be held by another public body, such as the City of Norfolk or the Norfolk Police Department, we will include contact information for the other public body in our response.
  4. **It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period.** If we require more time to complete the processing of your request, the Virginia Freedom of Information Act allows us to invoke an extension of seven business days. This is allowed if we invoke this extension within five business days after we have received your request. Our invocation of the extension will include one or more reasons allowed by the FOIA, such as a need for the records to be reviewed by an attorney, or because the custodian of the requested records is out of the office.
  5. **If your request includes investigative files as outlined in Virginia Code 2.2-3706.1,** we will have 60 business days in which to provide a response to you.

If you make a request for a large number of records and we feel we cannot provide the records to you within the time period without disrupting our organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires us to make a reasonable effort

to reach an agreement with you concerning the production or records before we go to court to request more time.

## **COST**

- Under the Virginia Freedom of Information Act, the Norfolk Sheriff's Office may assess reasonable charges for fulfilling a FOIA request, not to exceed its actual cost incurred in accessing, duplicating, supplying, and searching for the requested records, or developing a cost estimate.
- The Norfolk Sheriff's Office charges for records provided through the FOIA process in accordance with Section 2.2-3704 of the Code of Virginia. The Virginia Freedom of Information Act allows us to charge requesters for the actual costs of responding to FOIA requests. These allowable charges include staff time spent searching for and redacting exempt information from the requested records, copying costs, costs for discs or flash drives, or any other costs directly related to supplying the requested records. These costs cannot include general overhead costs.
- If a requester asks for paper copies of documents or asks that the records be provided on a CD or flash drive, charges for those items are: 15 cents for each black-and-white copy; 25 cents for each color copy; \$1 for each CD; and \$10 for each flash drive, which holds 2GB of data.
- 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 total 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. This deposit is based on an estimate only, and the final cost of production may be more or less than the deposit. If the final cost is less than the deposit, the balance will be returned to you. However, if the final cost is more than the deposit, the balance will be charged to you.
- You may request that we estimate in advance the charges for supplying records that you have requested. This will allow you to know about any costs up front or give you the opportunity to modify your request to try to lower the estimated costs.
- If you would like a cost estimate, please let us know promptly (before we provide a response to your request) by emailing us at [foia@norfolk-sheriff.com](mailto:foia@norfolk-sheriff.com). If we do not hear from you promptly, we will continue to process your request, and you may be responsible for the charges incurred.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, we may require payment of the past-due bill before it will respond to your new FOIA request.

***The Virginia Freedom of Information Act requires us to post this statement:***

***"A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. 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. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or***

*searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of the Code of Virginia.”*

## **COMMONLY USED EXEMPTIONS**

- Certain law enforcement records, or portions of law enforcement records, are exempt from disclosure under Virginia Code 2.2-3706, which maintains that information contained in investigative files and information on the identities of witnesses and victims are exempt from mandatory release under the Virginia Freedom of Information Act. ***See the [Code of Virginia § 2.2-3706 Disclosure of law-enforcement and criminal records and limitations](#) for details.***
- FOIA includes provisions that exempt other types of records, such as some city personnel information, any financial account information, personal information such as Social Security numbers, confidential tax information, confidential human services information, and legal advice given to the NSO under certain circumstances.
- To protect the integrity of ongoing investigations, the Norfolk Sheriff’s Office does not routinely release information included in investigative files. After a case is adjudicated or otherwise closed, other exemptions to information in the case file may apply.
- To protect the attorney-client privilege and attorney work product, the Norfolk Sheriff’s Office routinely withholds from release legal advice and work of its attorneys.
- To protect the financial interest of the agency, the Norfolk Sheriff’s Office routinely withholds information relating to the negotiation and award of a specific contract where competition or bargaining is involved before the award of the contract. After the award, proprietary information is routinely withheld.
- Records do not exist. The Virginia Freedom of Information Act does not require a governmental body to create records, to do legal research, or to answer questions about the records we might provide.
- You can find commonly cited FOIA exemptions from the Virginia Freedom of Information Advisory Council:  
[https://foiacouncil.dls.virginia.gov/Applicability\\_Exemptions/Records\\_Exemptions.htm](https://foiacouncil.dls.virginia.gov/Applicability_Exemptions/Records_Exemptions.htm)