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# THE VIRGINIA FREEDOM OF INFORMATION ACT

CITY OF PETERSBURG UPDATE

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# Virginia Freedom of Information Act (FOIA)

- The Virginia Freedom of Information Act (FOIA) was enacted July 1, 1968 by the General Assembly. Since that time it has undergone changes, revisions, and updates to include most recently on July 1, 2019.
- To ensure the “people of the Commonwealth” have ready access to *public records* in the custody of the public body or its officers/employees **AND** *free entry to meetings* of public bodies where the business of the people is conducted

# Virginia Freedom of Information Act (FOIA)

- To afford citizens the opportunity to witness the operations of government and to increase awareness of governmental activities
  - **BOTTOM LINE** – FOIA is intended to provide for a better informed electorate
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# Volume of Petersburg Requests

- Since January 1, 2019 the City of Petersburg has received over 170 FOIA requests
- Breaks down, on average, to 28 a month or 7 per week
- Most common requests are for police records, property information, budget items, and staff information
- FOIA requests have been increasing year on year
- City policy has constantly changed and the City is moving towards a central system of processing requests

## Requests for Public Records Under FOIA

- Generally, requests do not need to be in writing nor do they have to cite the Act or call the request a “FOIA request.”
- The motive of the requestor in making the request is irrelevant under the Act, even if the request is made solely to harass or impede daily operations
- However, a records request must identify the records sought with “reasonable specificity.”

## STEP 1: Identify your requester

- Has the requester identified him/her/itself as a Virginia resident, or can you make that inference from the address?
- Can deny out-of-state requestors

**REMEMBER:** FOIA was enacted to provide access to the “people of the Commonwealth”\*

\* In 2013, the United States Supreme Court upheld a Virginia county’s refusal to respond to a FOIA request made by an individual from out-of-state. *McBurney v. Young*, 133 S.Ct. 1709 (2013).

## STEP 2: Identify the request

- Is the request for a public record or something else?
  - What is a public record? Three elements are needed:
    - A public record is a writing or recording, set down or stored in any physical form
    - Prepared or owned by, or in possession of, a public body or its officers/employees/agents
    - Created in the transaction of public business

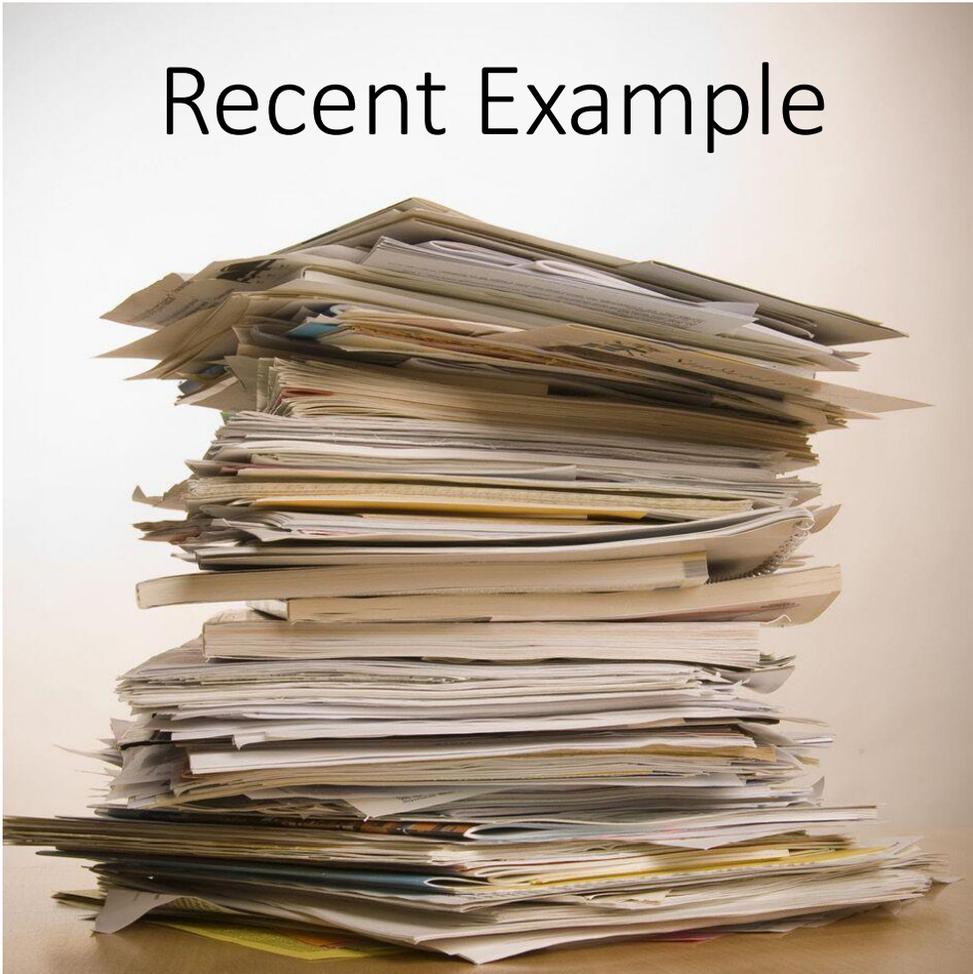
## STEP 3: Respond

- FOIA gives the City five (5) work days to make an initial response to the requestor
  - The day on which the request was received *does not* count
- FOIA provides for the following ways to respond:
  - Produce the records within 5 work days;
  - Notify the requester that the records are being withheld by law (i.e., records are exempt from mandatory disclosure);
  - Produce some records but notify the requester that other are being withheld as provided by law;
  - Notify the requester that the records do not exist or cannot be found; or
  - Notify the requester that you will need an additional 7 days to respond.

## STEP 4: Prepare a bill

- FOIA provides for the recoupment of expenses incurred in responding to a FOIA request to include:
  - Staff time (prorated hourly wage/salary)
  - Photocopy expenses
  - Postage
  - Data storage devices (e.g., CD, flash drives, etc.)
- The role for such bills is to:
  - Recoup City costs NOT Revenue Generation, staff must divert attention from regular duties to fulfill FOIA requests
  - Colonial Heights, Chesterfield County, and Prince George County all have policies regarding FOIA billing

## Recent Example



- Request for records received from citizen
- 5 day clock starts
- Email responsive departments for documents
- Day 4 - documents located and received in FOIA Office from department
- Documents consist of a 60 page contract and 170+ emails, all of which need to be gone through for sensitive information
- Day 5 - materials gone through, redactions done
- End of Day 5 – Response Sent

## Current Bill Payment

- The City has not been charging for FOIA requests
  - With the volume of FOIA requests the City has been receiving it has become apparent this process has only allowed for a greater volume of requests
  - In the technology age, email does not make things easier, it complicates them
  - Therefore, the City should begin officially charging for requests from citizens
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## THE VIRGINIA FREEDOM OF INFORMATION ACT

<i>Supply</i>	<i>Cost</i>
<ul style="list-style-type: none"> <li>• Paper copy reproduction – first 20 pages 8 ½” x 11”</li> <li>• Standard letter postage</li> <li>• Additional supplies under \$5.00</li> </ul>	Charge waived for 5 requests per calendar year
Copies/files transmitted by e-mail	No charge
Paper copy reproduction - pages over 20 pages 8 ½” x 11”	Actual cost per page (do not count first 20 pages)
<ul style="list-style-type: none"> <li>• Paper copy reproduction - any size other than 8 ½” x 11”</li> <li>• Data CD, flash drive, other electronic storage device</li> <li>• Postage greater than standard letter postage</li> <li>• Additional supplies over \$5.00 (no charge for first \$5.00)</li> <li>• Supplies from outside vendor</li> </ul>	City’s actual cost

## THE VIRGINIA FREEDOM OF INFORMATION ACT

Personnel	Cost
First 30 minutes	Charge is waived for 5 requests per calendar year and for responses in which the total cost is under \$200. After 5 requests from the same requestor in one calendar year or for responses in which the total cost exceeds \$200, the personnel cost is applied.
Any time over 30 minutes	City's actual personnel cost (hourly rate not including benefits of staff member performing task)
Personnel charges from outside vendor	City's actual cost

## STEP 5: Prepare a bill (cont.)

- Billing estimates may be requested in advance of a response
- Advance estimates are encouraged when a request appears to require a lot of time which means a big bill on the back end of the response

## Conclusions about FOIA record requests

- FOIA is an avenue by which citizens of the Commonwealth can gain access to public records
  - Access to public records DOES NOT mean records must be created to respond to an inquiry – if it doesn't exist, it doesn't exist!
  - FOIA is about producing documents, not answering questions!
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QUESTIONS?