

# **Rights & Responsibilities:**

## **The Rights of Requesters and the Responsibilities of the Petersburg Commonwealth Attorney's Office Under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located § 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 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 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.

### **FOIA Rights of Virginia Citizens and Certain Media Members**

- 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 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.

### **Making a Request for records from the Petersburg Commonwealth Attorney's Office**

- 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, 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 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 we 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 Petersburg Commonwealth Attorney's Office nor does it require this office to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Petersburg Commonwealth Attorney's office 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 we have 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 we may need to discuss your request with you to ensure that we understand what records you are seeking.

**To request records from the Petersburg Commonwealth Attorney's Office direct your request as follows:**

Requests regarding the Commonwealth's Attorney's Office can be directed to **Elsa Seidel, Senior Assistant Commonwealth's Attorney**, at (804) 861-8899, or email: [e.seidel@petersburgcommonwealth.org](mailto:e.seidel@petersburgcommonwealth.org) or hand-deliver or mail your request to 150 North Sycamore Street, Petersburg, Virginia 23803.

**This office does not respond to FOIA request for the City of Petersburg or any other City Departments or other Constitutional Offices.**

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@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at (804) 225-3056 or toll free 1-866-448-4100. Attached also is a copy District Court Form 495

## The Petersburg Commonwealth Attorney's Office Responsibilities in Responding to Your Request

- The Petersburg Commonwealth Attorney's Office 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 this office irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow this office to require you to provide your name and legal address.
- FOIA requires that the Petersburg Commonwealth Attorney's Office to make one of the following responses to your request within the five-day time period:

- 1) We provide you with the records that you have requested in their entirety.
- 2) We 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, we 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) We provide some of the records that you have requested, but withhold 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. We 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) We inform 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 this Office to respond to your request within the five-day period, we 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 we feel 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 we 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.
- You may have to pay for the records that you request from the City of Petersburg. 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.
- 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 five 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.
- You may request that we 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 us money from a previous FOIA request that has remained unpaid for more than 30 days, the City of Petersburg may require payment of the past-due bill before it will respond to your new FOIA request.

## Commonly used exemptions

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

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))

- Personal Information (§ 2.2-3705.1 (10))
- Health Records (§ 2.2-3705.5(1))
- Criminal Investigative Files (§ 2.2-3706(A)(2)(a))
- Victim/Witness/Undercover Office (§ 2.2-3706(A)(2)(j))
- Anonymous Witness (§ 2.2-3706(A)(3))
- Noncriminal Record (§ 2.2-3706(B))
- Social Security Number (§ 2.2-3815)
- Confidential Taxpayer Information (§ 58.1-3)
- Other exemptions may be applicable

**Using This Revisable PDF Form**

1. Copies – contact the local district court to determine if you should bring copies with you or whether the clerk will make the copies after acknowledging the original.
  - a. Original – to court.
  - b. First copy – to respondent.
  - c. Second copy – to petitioner
2. Prepared by petitioner and acknowledged by a clerk, deputy clerk, magistrate or notary public.
3. Attachments – none.
4. Preparation details
  - a. The respondent may be a person in his official capacity.
  - b. Review the venue provisions in Va. Code § 2.2-3713 or § 2.2-3816, as applicable, if the respondent is a local public body, regional public body; board, bureau, commission, authority, district, institution, or agency of the state government (including a public institution of higher education); or standing or other committee of the General Assembly.

PETITION FOR INJUNCTION OR MANDAMUS - FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT

PETITION FOR INJUNCTION OR MANDAMUS - FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT

Commonwealth of Virginia VA. CODE §§ 2.2-3713, 2.2-3816

2 CITY OR COUNTY General District Court

4 STREET ADDRESS OF COURT

PETITIONER

RESPONDENT

I, the Petitioner, state under oath that:

The following rights and privileges under the Virginia Freedom of Information Act were denied to me by the Respondent:

(DESCRIBE RIGHTS AND PRIVILEGES DENIED)

7 These rights and privileges were denied to me by:

[ ] the respondent [ ] who denied me these rights and privileges by

I have good cause for filing this petition in that:

9

10 OR [ ] The respondent [ ] is about to engage in acts in violation of the Protection of Social Security Numbers Act by

11 (DESCRIBE ACTS)

I ask this court to issue:

12 [ ] a writ of mandamus to require the respondent to act as follows: [ ] an injunction to enjoin (prohibit) the respondent from acting as follows:

(DESCRIBE ACTS TO BE REQUIRED OR PROHIBITED)

13

DATE

15

14 PETITIONER

Commonwealth of Virginia, [ ] City [ ] County of

16

17

18

DATE

FORM DC-495 (MASTER) 07/09

[ ] Clerk [ ] Deputy Clerk [ ] Magistrate [ ] Notary Public: My commission expires: Notary Registration No.

CASE NO. 1

19

PETITIONER(S)

ADDRESS/LOCATION

23

HEARING DATE AND TIME

v.

20

RESPONDENT(S)

ADDRESS/LOCATION

PETITION FOR INJUNCTION OF MANDAMUS - FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT

21

ATTORNEY(S) FOR PETITIONER(S)

22

ATTORNEY(S) FOR RESPONDENT(S)

DISABILITY ACCOMMODATIONS for loss of hearing, vision, mobility, mobility, etc., contact the court ahead of time.

## Data Elements

To be completed by Clerk:

1. Court case number.
2. Court name.
3. Street address of court.
4. Name of petitioner.
5. Name of respondent. See Using This Form, 4.a.
6. Statement of statutory rights and privileges under the Virginia Freedom of Information Act allegedly denied by the respondent.
7. Check and, if applicable, insert name of person whose actions allegedly denied these rights and privileges to the petitioner.
8. Statement of facts as to have such rights and privileges were allegedly denied.
9. Statement describing the good cause for filing this petition.
10. Check and, if applicable, insert name of person who as engaged, is engaged or is about to engage in acts in violation of the Protection of Social Security Numbers Act.
11. Description of acts allegedly in violation of the Protection of Social Security Numbers Act.

12. Check the applicable box and describe the desired action to obtain compliance with the Virginia Freedom of Information Act.

13. Date of signing of the petition.

14. Signature of petitioner.

To be completed by person acknowledging petitioner's signature:

15. Check the applicable box and add name of city or county where acknowledgement is taken.

16. Name of person whose oath is being acknowledged.

17. Date of acknowledgement.

18. Signature of person taking the acknowledgement. Check the applicable title box and, if applicable, insert date of expiration of commission.

19. Petitioner's name and address.

20. Respondent's name and address.

21. Name of petitioner's attorney, if any.

22. Name of respondent's attorney, if any.

To be completed by Clerk:

23. Hearing date and time.