

COMMISSION ADOPTED POLICY
Freedom of Information Act – Public
Records



Adopted: December 21, 2004

Revised: August 22, 2023

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1.0 Purpose and Need

HRSD is occasionally requested to provide records in accordance with the Virginia Freedom of Information Act (FOIA), found in §§ 2.2-3700 through 2.2-3715 of the Code of Virginia. FOIA guarantees the people of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth access to public records held by public bodies, public officials and public employees. All public records are presumed open unless an exemption is invoked or otherwise prohibited by law.

2.0 Definitions (See also Virginia Code § 2.2-3701)

2.1 ***Information*** – as used in the exclusions established by Code of Virginia §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

2.2 ***Public Records*** (also referred to herein as “Records”) – all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

2.3 ***Records Held by Others*** – records consisting of studies, reports, plans, specifications and other project-related information prepared by consultants, contractors, suppliers and vendors working directly for HRSD as part of a specific project or service contract.

2.4 ***Working Papers*** – records prepared by or for the HRSD General Manager for their personal or deliberative use.

3.0 FOIA Rights and Responsibilities

In an effort to increase awareness of the public’s right to information, Virginia requires all public agencies to make their FOIA compliance doctrine “*FOIA Rights and Responsibilities: The Rights of the Requesters and the Responsibilities of HRSD*” available. This section includes:

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- A “plain language” explanation of the rights of the requester under FOIA, the procedure to obtain records, and the responsibilities of HRSD in complying with FOIA;
- Information on how to reach HRSD’s designated FOIA Officer;
- A general description of the types of public records maintained by HRSD and exemptions in law that permit or require such public records to be withheld from release; and
- HRSD’s policy on records it routinely withholds as permitted by FOIA.
- Policies complying with the following statement, which is provided herein in accordance with Virginia Code § 2.2-3704.1(A)(6).

“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.”

3.1 The Rights of Requesters

- Requesters have the right to request to inspect or receive copies of public records, or both. Only HRSD employees will access information and public records stored electronically.
- HRSD may require the requester to provide their name and legal address.

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- Requesters have the right to request that any charges for the requested records be estimated in advance. HRSD must notify you in writing that it may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and inquire if you would like to request a cost estimate in advance of supplying the requested records. If you request a cost estimate, the period of time for HRSD's response to the records request does not begin until it receives a response from you regarding the estimate. If there is no response from you within 30 days following provision of the estimate, HRSD will consider the request withdrawn.
- Records may be requested by U.S. Mail, fax, email, in person, or over the phone. FOIA does not require that you use any particular method to convey your request. FOIA also does not require that your request be in writing, nor do you need to state that you are requesting records pursuant to FOIA. From a practical perspective, it is helpful for all parties for requests to be submitted in writing to create a record of your request and provide HRSD with a clear statement of what records you are requesting. This helps to prevent misunderstanding over a verbal request. However, HRSD cannot refuse to respond to your FOIA request if you elect not to submit it in writing.
- Requesters must identify the records they 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 you to be specific enough to allow HRSD to identify and locate the records that you are seeking.
- HRSD is only required to provide existing public records. FOIA gives you a right to inspect or receive a copy of records. It does not apply to a situation where you are asking general questions about the work of HRSD, nor does it require HRSD to create a record that does not exist.
- Requesters may choose to receive electronic records in any format used by HRSD in the regular course of business. For example, requesters may elect to receive those records electronically, via email, on a computer disk or flash drive, or to receive a printed copy of those records.
- If HRSD 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 or complex

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request. Making a FOIA request is not an adversarial process, but discussion may be needed to understand what records are being sought in the request.

- To request records from HRSD or ask questions about requesting records, you may contact the designated FOIA officer:

Jennifer Cascio
FOIA Officer
HRSD
PO Box 5911
Virginia Beach, Virginia, 23471-0911
757.460.7003
foia@hrsd.com

- In addition, the Freedom of Information Advisory Council (FOIA Council) is available to answer any questions you may have about FOIA. The Council was created in the legislative branch of state government to issue opinions on the operation and application of FOIA, to publish educational materials, and to provide training about FOIA. However, please be aware that the Council is not a records repository and does not process records requests on behalf of other public bodies, nor is the Council an investigative or enforcement agency. The Council may be contacted by or by phone at 804.698-1810 or toll free at 866.448.4100 or by email at foiacouncil@dls.virginia.gov.
- If the requester believes that their FOIA rights have been violated, they may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, the requester may contact the FOIA Council for a nonbinding advisory opinion.
- The FOIA Council also accepts comments on the quality of assistance provided to the requester by HRSD. The comment form is available online at <http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>.

3.2 The Responsibilities of HRSD in Responding to Requests

- HRSD must respond within five working days of receiving a request. "Day One" is considered the working day after a request is received. The five-day period does not include weekends, state holidays, or when HRSD is closed for business.

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- The reason for the request for public records is irrelevant, and the requester is not obligated to state why they want the records.
- FOIA requires HRSD to make one of the following responses to a request within the five working day time period:
 - (1) The requested records are provided in their entirety.
 - (2) The requested records are withheld in their entirety because they are subject to a specific statutory exemption. If all of the records are being withheld, HRSD must send a written response identifying the volume and subject matter of the records being withheld and stating the specific section of the Code of Virginia that authorizes withholding the records.
 - (3) The requested records are provided in part but are withheld in part. HRSD cannot withhold an entire record if only a portion of it is subject to an exemption. In this instance, HRSD will redact the portion of the record that may be withheld and provide the remainder of the record. HRSD must provide a written response stating, with reasonable particularity, the subject matter of the withheld portions and the specific section of the Code of Virginia that authorizes the withholding of the records.
 - (4) That the requested records cannot be found or do not exist. Only documents that exist will be made available for inspection or produced. It is not the responsibility of HRSD to create any documents to respond to a request. However, if HRSD knows that another public body has the requested records, contact information for the other public body will be included in the response.
 - (5) If it is not practically possible for HRSD to provide the requested records or to determine whether they are available within the five work-day period, including an explanation of the conditions that make the response impossible. Thereafter, HRSD shall have seven additional workdays, for a total of 12 working days, to respond to the request.
- If the request is for a very large number of records, or the request is complex, and HRSD believes that we cannot provide the records within 12 working days without disrupting our other operational responsibilities, HRSD may

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petition the circuit court for additional time to respond to the request. However, HRSD will make a reasonable effort to reach an agreement with the requester concerning the production or the records before petitioning the court for additional time.

- The time periods and responses described above may be tolled or adjusted consistent with the cost-related provisions of FOIA and this Policy.
- The FOIA Officer shall take all necessary precautions for preservation and safekeeping of the records.
- If HRSD receives a request for records related to public safety that are excluded under clauses (a) or (b) of Code of Virginia § 2.2-3705.2(14), HRSD shall notify the Secretary of Public Safety and Homeland Security, or their designee of such request and the response made by HRSD to the request.

3.3 Costs

FOIA allows HRSD 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. No charges will include general overhead costs and HRSD will 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 HRSD. Any duplicating fee charged by HRSD shall not exceed the actual cost of duplication.

If HRSD estimates that it will cost more than \$200 to respond to a request, a deposit, not to exceed the amount of the estimate, shall be required before proceeding with the request. The period for providing a response to the request does not include the time between when a deposit is requested and when a requester responds.

All deposits shall be paid by credit card or by check or money order payable to HRSD and mailed or delivered to HRSD's office at 1434 Air Rail Avenue, Virginia Beach, Virginia 23455. Any outstanding balance will be immediately due and payable by the requester upon providing the requested records. Any balance remaining from the deposit shall be returned to the requester.

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If a requester owes HRSD money from a previous FOIA request that has remained unpaid for more than 30 days, HRSD may require payment of the past-due bill before responding to a new FOIA request.

- 3.3.1 Labor Costs: Time necessary to respond to the request, including to locate, retrieve, and/or reproduce records will be charged at the hourly rate for the staff person responding to the request as listed in the fee schedule below.
- 3.3.2 Paper Copies: Cost for providing paper copies will be based on prices established in HRSD's copier (machine usage fee) and paper supply contracts as listed in the fee schedule below. Larger drawings and blueprints will be copied by outside contractors and charged at their usual rate. Postage and other material fees will be charged at their actual costs.
- 3.3.3 Electronic Records: Costs for providing electronic records will be charged at the hourly rate as listed in the fee schedule below. Any materials such as flash drives provided to the requester will be charged at their actual costs.
- 3.3.4 There will be no mark-up or profit charged to the above-mentioned costs nor shall HRSD charge any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the business of HRSD. HRSD will make all reasonable efforts to supply the requested records at the lowest possible cost, including utilizing the appropriate staff person to respond to the request.
- 3.3.5 Charges may be waived if the request is specific and limited such that responsive electronic records can be found and produced for less than \$200. However, HRSD maintains the right to recover all costs incurred consistent with FOIA.
- 3.3.6 Fee Schedule

- Paper Copies:

Size	Cost per Page
8 ½" x 11"	\$0.13
8 ½" x 14"	\$0.14
11" x 17"	\$0.15

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- Hourly rate of person searching for records:

<u>Grade</u>	<u>Hourly Rate</u>	<u>Title</u>
4	\$24.93	Coordinators
5	\$27.17	GIS CAD & Safety Technician
6	\$30.91	Public Information Specialists/Procurement Specialist/Contract Specialists
7	\$35.18	FOIA Officer/Supervisor/Specialists/Chief Systems Operators/Engineering Analysts
8	\$41.80	Analysts/Safety Professionals/Ops Superintendents/Supervising Specialists
9	\$47.57	Managers/Scientists
10	\$51.86	Process Engineers
11	\$59.01	Chiefs
12	\$73.17	Directors

IT Staff:

<u>Grade</u>	<u>Hourly Rate</u>	<u>Title</u>
4	\$26.17	Admin Coordinator
5	\$28.52	Telecom Coordinator
6	\$32.46	Systems Analyst/Web portal programmer
7	\$36.94	IT Helpdesk supervisor
8	\$43.89	Analysts/Developers/Administrators
9	\$49.95	Managers and Engineers
11	\$61.96	Chiefs
12	\$76.83	Director

3.4 Types of Records

Records maintained by HRSD include, for example, minutes of HRSD Commission meetings, personnel records, record drawings, and contracts into which HRSD has entered. If you are unsure whether HRSD has the record(s) you seek, please contact the HRSD FOIA Officer directly.

3.5 Commonly Used Exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure in its discretion. For a full list of exemptions, see the Code of Virginia § 2.2-3705.1 *et seq.* Exemptions HRSD may use include, but are not limited to, the following:

- Personnel records § 2.2-3705.1(1)
- Records subject to attorney-client privilege § 2.2-3705.1(2)
- Vendor proprietary information § 2.2-3705.1 (6)
- 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 § 2.2-3705.1 (8)
- Information relating to the negotiation and award of a contract, prior to a contract being awarded § 2.2-3705.1 (12)
- The portions of records that contain account numbers or routing information for any credit card, debit card or any other account with a financial institution of any person or public body § 2.2-3705.1(13)
- General Manager's correspondence and working papers § 2.2-3705.7(2)
- Customer account information § 2.2-3705.7(7).
- Information and records containing written advice of counsel, information protected by attorney-client privilege, and legal memoranda and other work product for litigation or administrative investigations § 2.2-3705.1 (2), (3).
- Information, such as social security numbers, made confidential under other laws.

3.6 Policy Regarding the Use of Exemptions

HRSD reserves the right to withhold, exempt or redact any and all records that are allowed or required to be withheld, exempted, redacted, or excluded from production by law. It is HRSD's policy to withhold any information and records to protect:

- the privacy of HRSD personnel and officials,
- the property and pecuniary interests of HRSD,
- the privacy of customers,
- legal advice, work product, or attorney-client privilege,
- HRSD's interests related to administrative investigations and litigation,
- matters for discussion in closed meeting of the HRSD Commission, and
- the safety of HRSD systems and facilities, and the public generally.

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3.7 Resources available to the public:

- [Chapter 37 of Title 2.2](#) of the Code of Virginia, as amended, also known as [The Virginia Freedom of Information Act](#);
- the [FOIA Council](#); and
- the [Virginia Coalition for Open Government](#).


4.0 HRSD's Procedures

4.1 Any requests for public records should be immediately forwarded to the FOIA Officer, who will log when and by whom the request was received. The FOIA Officer will provide the General Manager with a copy of each request and seek their guidance on obtaining legal advice, if necessary, and determining who should respond. The FOIA Officer will coordinate the response and assure the request is acted upon in the prescribed amount of time, logging the response date. The Director of Communications will serve as backup FOIA Officer when necessary.

4.2 The FOIA Officer shall be trained by legal counsel, the FOIA Council, or through an online course offered by the FOIA Council. Training shall be completed as required by the Code of Virginia.

Approved:  _____
Stephen C. Rodriguez
Commission Chair

 _____
Date

Attest:  _____
Jennifer L. Gascio
Commission Secretary

 _____
Date

Commission Seal

