

# COMMISSION ADOPTED POLICY

## *Freedom of Information Act*



Adopted: December 21, 2004

Revised: September 28, 2021

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### 1.0 **Purpose and Need**

HRSD is occasionally requested to provide records in accordance with the Freedom of Information Act (FOIA), Code of Virginia §§ 2.2-3700 through 2.2-3715. Information may be requested verbally in person or over the phone, in writing, by fax, by email or other electronic communications. While not required to do so, HRSD will make every attempt to obtain records prepared by consultants, contractors, suppliers and vendors working directly for HRSD as part of a specific project or contract and share this information in response to a FOIA request, except in such cases where said records are protected as trade secrets or proprietary information of consultants, contractors, suppliers and vendors in accordance with Code of Virginia §2.2-4342.F. While we will make every attempt to obtain records requested of consultants, contractors, suppliers and vendors within the same response time as HRSD, they are not legally bound to meet the same time restrictions.

### 2.0 **Definitions**

- 2.1 ***Public 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.
- 2.2 ***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.
- 2.3 ***Working Papers*** – records prepared by or for certain executive level public officials for their personal or deliberative use.

### 3.0 **Guiding Principles**

Code of Virginia, [Chapter 37 of Title 2.2 The Virginia Freedom of Information Act](#), the [Virginia Freedom of Information Advisory Council](#) and the [Virginia Coalition for Open Government](#).

### 4.0 **Procedures**

Any requests for information should be immediately forwarded to the FOIA Officer (Commission Secretary), 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 his guidance on obtaining legal counsel, if necessary, and determining who should respond. The FOIA Officer will coordinate the response and assure the request is acted upon in the

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prescribed amount of time, logging the response date. The Director of Communications will serve as backup FOIA Officer when necessary.

Public Records Maintained by HRSD will be provided under the following limitations:

- 4.1 Labor for production of documents will be charged to the requestor at the actual wage cost.
- 4.2 Costs for copies will be based on prices established in HRSD's copier contracts and paper costs. Larger drawings and blueprints will be done by outside contractors and charged at their usual rate. Postage and other material fees will be charged at their actual costs. Costs for providing electronic records will be charged at the usual rate for the staff person responding to the request.
- 4.3 Time necessary to locate, retrieve and/or reproduce documents or records will be charged at the usual rate for the staff person responding to the request. Documents can be provided on digital media, if requested.
- 4.4 Only documents that exist will be made available. It is not the responsibility of HRSD to create any documents.
- 4.5 There will be no mark-up or profit charged to the above-mentioned costs.
- 4.6 HRSD will provide the material requested within five working days or notify the requestor within five working days that an additional seven days is required and the reason. Additional time may be negotiated for large requests.
- 4.7 If the cost is expected to exceed \$200, HRSD may require payment of a deposit in advance in an amount not to exceed the estimated cost. The time required to fill the request stops until the payment is made.

The requestor may request an estimate of charges in advance. If so, HRSD must provide the estimate, and the period of time for HRSD's response to the records request does not begin until it receives a response from the requester regarding the estimate. If there is no response from the requester within 30 days following provision of the estimate, HRSD may consider the request withdrawn.

- 4.8 All public records shall be open to the citizens 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 during HRSD's regular office hours. Access to such records shall be provided by the FOIA Officer by inspection or by providing copies of the requested records, at the option of the requestor. HRSD may require the requester to provide their name and legal address. The FOIA Officer shall take all necessary precautions for preservation and safekeeping of the records.

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- 4.9 If an exemption from mandatory is applicable, the exemption may be exercised.
- 4.10 Email and other electronic records may be public records subject to FOIA.
- 4.11 Only HRSD employees will access electronic information. No direct access to electronic files will be granted to requesting parties.
- 4.12 All working papers of the General Manager are exempt from FOIA.
- 4.13 The FOIA Officer shall be trained annually by legal counsel or the Virginia Freedom of Information Advisory Council.

**5.0 Responsibility and Authority**

In an effort to increase awareness of the public's right to information, Virginia now requires all public agencies to make their FOIA compliance doctrine available on their websites. The compliance doctrine entitled "[FOIA Rights and Responsibilities: The Rights of the Requesters and the Responsibilities of HRSD](#)" is included in [Appendix A](#) and includes the following:

- A "plain language" explanation of the rights of the requestor under FOIA, the procedure to obtain records and the responsibilities of the agency in complying with FOIA;
- Information on how to reach the agency's designated FOIA contact person; and
- The agency's policy on records it routinely withholds as permitted by FOIA.

Approved:

\_\_\_\_\_  
Frederick N. Elofson  
Commission Chair

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Jennifer L. Cascio  
Commission Secretary

\_\_\_\_\_  
Date

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**The Rights of Requesters and the Responsibilities of HRSD**

The Virginia Freedom of Information Act (FOIA), found in § 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, electronic file, audio or video recording, or any other format -- that is prepared by, 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 be interpreted narrowly.

**Your FOIA Rights**

You have the right to request to inspect and/or receive copies of public records.

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 Virginia FOIA Council for a nonbinding advisory opinion.

**Making a Request for Records from HRSD**

You may request records by U.S. Mail, fax, email, in person or over the phone. FOIA does not require that your request be in writing, nor must you specifically state that you are requesting records under FOIA. From a practical perspective, written requests are preferred; they provide us with a clear statement of what records you are requesting and allow you to create a record of your request. However, we cannot refuse to respond to your FOIA request if you elect not to submit 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 you to be specific enough to allow us to identify and locate the records that you are seeking.

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HRSD is only required to provide [or...FOIA provides public access only to] 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 HRSD, nor does it require HRSD to create a record that does not exist.

You may choose to receive electronic records in any format used by HRSD in the regular course of business. For example, if you are requesting records maintained in an Excel spreadsheet, you may elect to receive those records electronically, via email, 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 HRSD or ask questions about requesting records, you may contact the designated FOIA officer:

Jennifer Cascio  
Commission Secretary  
HRSD  
PO Box 5911  
Virginia Beach, Virginia, 23471-0911  
757.460.7003  
[FOIA@hrsdc.com](mailto:FOIA@hrsdc.com)

If you wish to make your request in person, you may do so at: 1434 Air Rail Avenue, Virginia Beach, Virginia.

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 email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at 804.225.3056 or [toll free] 866.448.4100.

### **HRSD's Responsibilities in Responding to Your Request**

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

The reason for your request for public records from HRSD is irrelevant, and you are not obligated to state why you want the records before we respond to your request. FOIA does, however, allow HRSD to require you to provide your name and legal address.

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FOIA requires HRSD to make one of the following responses to your request within the five-day time period:

- (1) We provide you with the requested records in their entirety.
- (2) We withhold all of the requested records because they are subject to a specific statutory exemption. If all of the records are being withheld, we must send you 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 allows us to withhold them.
- (3) We provide some of the requested records, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In this instance, we may redact the portion of the record that may be withheld and 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. 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.
- (5) If it is practically impossible for HRSD to respond to your request within the five-day period, we must state this in writing and explain the conditions that make the response impossible. This will grant us seven additional working days, for 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 believe 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 petition the court for additional 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

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estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia.

Costs for copies will be \$0.10 per sheet for photo-copied or printed 8" x 11" sheets. Larger drawings and blueprints will be done by outside contractors and charged at their usual rate. Postage and other material fees will be charged at their actual costs. Costs for providing electronic records will be charged at the usual rate for the staff person responding to the request and shall not 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 working days that we are granted to respond to your request do not include the time between when we ask for a deposit and when you respond.

You may ask that we estimate in advance the charges for supplying the requested records. This will inform you of charges upfront and/or give you the opportunity to modify your request in an attempt to lower the estimated costs. The statutory time limits for response provided by FOIA do not begin until you grant HRSD the permission to proceed by approving the estimate or paying the deposit as required above. Your failure to respond within 30 days of HRSD providing a requested estimate of costs allows HRSD to consider your request withdrawn.

All deposits shall be paid by check or money order payable to HRSD and mailed or delivered to HRSD's office at 1434 Air Rail Avenue in Virginia Beach. Checks and money orders will only be deposited once the FOIA request is complete. Any outstanding balance due must be paid before or as the responding records are released. Any balance remaining from the deposit shall be returned to the requester.

If you owe HRSD 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 responding to your new FOIA request.

### **Types of Records**

Records maintained by HRSD include, for example, 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.

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### **Commonly Used Exemptions**

The *Code of Virginia* allows any public body to withhold certain records from public disclosure in its discretion. 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)**
- 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 working papers § **2.2-3705.7(2)**
- Information, such as social security numbers, made confidential under other laws.

For a full list of exemptions, see the *Code of Virginia* § 2.2-3705.1 et seq.

### **Policy Regarding the Use of Exemptions**

It is HRSD's policy to exempt any and all records that are allowed to be exempted, redacted or excluded from production by law.