

## **CITY OF CHESAPEAKE FREEDOM OF INFORMATION ACT (FOIA) REQUESTS GUIDELINES AND PROCEDURES**

### **Statement of Intent**

The affairs of government are not intended to be conducted in an atmosphere of secrecy, since at all times the public is to be the beneficiary of any action taken at any level of government. Therefore, the Virginia Freedom of Information Act (FOIA) was enacted by the Virginia General Assembly to ensure citizens of the Commonwealth of Virginia ready access to public records and free entry to meetings of public bodies in which the business of the people is being conducted. Such access is also afforded to representatives of newspapers and magazines with circulation in the Commonwealth and representatives of radio and television stations broadcasting in or into the Commonwealth.

This document establishes the procedures for handling requests received under the Virginia Freedom of Information Act (FOIA), Code of Virginia Section 2.2-3700 *et seq.* It does not address the requirements for public meetings under FOIA.

These guidelines and procedures apply to all employees in departments under the direction of the City Manager. It will provide guidance for achieving the following objectives:

1. Comply with the Virginia Freedom of Information Act (Code of Virginia Section 2.2-3700 *et seq.*) regarding access to public records;
2. Develop and implement procedures that facilitate the management of and response to FOIA requests; and
3. Create a network of personnel throughout the City of Chesapeake designated and trained to manage FOIA requests.

## **I. Roles and Responsibilities under the Virginia Freedom of Information Act**

### **A. The City of Chesapeake**

The City of Chesapeake shall comply with the requirements of the Virginia Freedom of Information Act (FOIA) to provide access to its public records to 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.

### **B. Designated FOIA Officers**

The Chesapeake City Manager shall designate at least one FOIA Officer to oversee the City's FOIA management program in accordance with the requirements of the Virginia Freedom of Information Act. In addition, the City's constitutional officers (the Clerk of the Circuit Court, Commissioner of the Revenue, Commonwealth's Attorney, Treasurer, and Sheriff) have each designated one or more FOIA Officers to manage requests for their departments. The names and contact information for all FOIA Officers shall be posted on the City of Chesapeake's website and submitted to the Virginia Freedom of Information Act Advisory Council. For the purposes of this document, all further references to the "FOIA Officer" shall mean the City's main FOIA Officer, appointed by the City Manager.

The City's designated FOIA Officer is responsible for the development, implementation, and ongoing coordination of the FOIA request management program to meet regulatory requirements. Duties of the City's FOIA Officer include:

- Developing procedures for the City of Chesapeake's FOIA request management system;
- Providing training in FOIA procedures and practices;
- Assisting citizens with the submission of FOIA requests and answering questions about the City's FOIA policy;
- Serving as the coordinator and contact point for all outgoing FOIA responses involving exemptions or extensions, with the exception of requests to departments with their own FOIA Officer, requests to the Police Department, or requests from the media;
- Serving as the coordinator and contact point for all FOIA requests and responses involving multiple departments, except those for departments which have their own FOIA Officer;
- Serving as the coordinator and contact point for any other FOIA requests, at the request of a department; and
- Coordinating the City of Chesapeake's compliance with the provisions of FOIA.

### **C. FOIA Coordinators**

Each department, except for those with their own FOIA Officers, shall designate one or more FOIA Coordinator, and shall notify the City's FOIA Officer of such designation. In departments with only one FOIA Coordinator, a backup FOIA Coordinator shall also be appointed.

Responsibilities of a FOIA Coordinator include:

- Being familiar with these guidelines and procedures;
- Developing their department's FOIA request management procedures and practices, consistent with these guidelines and procedures;
- Educating staff within their department in the identification of a FOIA request;
- Coordinating with staff within their department to gather documents responsive to FOIA requests; and
- Responding to routine FOIA requests which do not involve extensions, exemptions, more than one department, or the media.

Responsibilities of a backup FOIA Coordinator include:

- Assisting the primary FOIA Coordinator during periods of heavy FOIA request volume or with large requests; and
- Acting as the FOIA Coordinator when the primary FOIA Coordinator is unavailable.

### **D. Employees**

All City of Chesapeake employees are responsible for following the requirements of FOIA. Responsibilities of each employee include:

- Being able to identify a FOIA request;
- Immediately forwarding any FOIA requests that they receive to their departmental FOIA Coordinator; and
- When requested, assisting their Departmental FOIA Coordinator to gather documentation responsive to a FOIA request.

## **II. Receipt of Freedom of Information Act Requests**

### **A. Definition of Public Records**

For purposes of FOIA, the City shall use the definition of a "public record" in Virginia Code Section 2.2-3701 which, as of the date of this document, is "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." This definition includes drafts of documents, as well as information contained in a database. This also includes public records that are stored on personal devices.

## **B. Freedom of Information Act (FOIA) Requests**

Any request for public records submitted to the City shall be treated as a FOIA request, regardless of the form of the request or whether the requestor invokes the provisions of FOIA while making the request.

The FOIA Officer or FOIA Coordinator shall require the requestor to provide his or her name and legal physical address, and in the case of a media request, the media outlet represented. Confirmation of this information with identification documents may only be required when the requested information is only allowed to be released to certain individuals. Examples of such a situation include requests for an individual's own personnel or medical records.

The request must identify the requested records with reasonable specificity; if the request is unclear or non-routine the citizen may be asked, but not required, to put the request in writing, or the request may be written down and read back to the requestor for confirmation.

Each FOIA Coordinator and FOIA Officer should keep a written record of all requests for clarity and, if necessary, future confirmation. The date of the request must be recorded in order to make an appropriate response within the time limitation. Documents relating to the FOIA request, including the request, response, and billing information, shall be retained and destroyed pursuant to the Library of Virginia's Record Schedule GS-19, Series 010049.

## **C. Identification of a Freedom of Information Act Request to Requestor**

When the requestor does not identify a request for records as a FOIA request, the person receiving the request shall inform the requestor that it is a FOIA request and shall treat it as such.

## **D. Notification of Request Received**

Immediately upon receipt of a FOIA request, the recipient shall notify their departmental FOIA Coordinator. If the request is from a member of the media, the Departmental FOIA Coordinator shall also notify the FOIA Officer and the Director of Public Communications.

If the department to which the FOIA request was submitted is not the custodian of the requested records, the recipient shall immediately forward the request to the City's FOIA Officer, who will assign it to the appropriate department's FOIA Coordinator.

## **E. Requests Related to Existing or Potential Lawsuits**

If it appears that the requestor may be asking for documents in relation to a current or potential lawsuit, the FOIA Coordinator or FOIA Officer shall notify the City Attorney's Office upon receipt of the request. If the City Attorney's Office determines that there is reasonable probability of a lawsuit, then it may choose to review all responsive documents prior to release, within prescribed time limits.

### **III. Responses to Freedom of Information Act requests**

#### **A. Response Time and Form**

A response to a FOIA request shall be sent no later than five business days after the date on which the request was received by the City. As an example, in a week with no City holidays, a response to a request received on a Monday must be made no later than the following Monday. All responses shall be in writing and shall take one of the following forms:

1. In accordance with the specific request, the requested records are provided for inspection by, or copies are made for, the requestor.
2. The requested records are being provided in part and withheld in part because their release is prohibited by law or the City has exercised its discretion to withhold the records in accordance with FOIA. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. Please see subsection (I) below for additional information on claiming an exemption.
3. The requested records are being entirely withheld because their release is prohibited by law or the City has exercised its discretion to withhold the records in accordance with FOIA. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. Please see subsection (I) below for additional information on claiming an exemption.
4. The requested records could not be found or do not exist. However, if the City knows that another public body has the requested records, then the response shall direct the requestor to that public body and provide that public body's contact information.
5. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Please see subsection (C) below for more information on claiming an extension.

## **B. Responses to Routine Freedom of Information Act Requests**

Departmental FOIA Coordinators, or designees, may handle routine FOIA requests involving only one department without the assistance of the FOIA Officer. However, if an extension is necessary, if exemptions are to be claimed for documents other than Police records, or if multiple departments are involved, the FOIA Officer shall coordinate the response. Additionally, if the request is from a media outlet, the FOIA Officer shall coordinate the response with the assistance of the Public Communications Department.

## **C. Extensions**

If a response within the five business days allowed by FOIA is not practically possible, the City shall claim an extension of an additional seven business days. If a response within the twelve total business days is not practically possible, then the City shall come to an agreement with the requestor regarding an additional extension as soon as it is evident that the initial or extension response period cannot be met. If it is not possible to come to an agreement with the requestor, and if the request is for an extraordinary volume of records or involves an extraordinarily lengthy search, the City Attorney's Office may petition the Court for additional time to respond to the request.

To claim an extension, the City shall inform the requestor in writing of the conditions that made the fulfillment of the request within five business days not practically possible. With the exception of the Police Department, departments without their own FOIA Officer must request assistance from the City's FOIA Officer to claim an extension.

## **D. Receipt Date of Request**

If a request is received by any City department within normal business hours, the request is considered to be received that day, even if the department receiving the request is not the department who is the custodian of the responsive records.

If a request is received after business hours or on a day when the City is closed, it will be considered to be received on the next business day.

For the purposes of these guidelines and procedures, "normal business hours" are considered to be Monday through Friday, 8:00 am to 5:00 pm, with the exclusion of City holidays and closures. This definition of "business hours" shall apply even when an employee involved in the FOIA response works a different schedule. Departments are advised to assign employees to monitor their department-wide email inboxes for FOIA requests during normal business hours.

## E. Costs

1. Reasonable charges shall be made to the requestor in order to recover the City's actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. Generally, applicable charges are as follows:

- *Copies*: \$0.10 per copy for 8.5" x 11" or 8.5" x 14" paper; additional charges, not to exceed the actual costs incurred, may apply for non-standard copies (e.g. plan sheets).
- *CDs/DVDs*: \$5.00 per CD or DVD. Personnel time to burn the CD or DVD shall be included in this \$5.00 charge.
- *Personnel time*: If the requested records can be retrieved and copied in less than fifteen minutes of total personnel time, there shall be no charge for personnel time. If fifteen minutes or longer is required to search for, retrieve, and/or copy the requested records, a charge for personnel time shall be assessed.

When determining fees for requestors who submit multiple requests within a thirty day period, the labor time shall be calculated cumulatively. If more than fifteen total minutes is required to respond to all of the requestor's FOIA requests within that thirty-day period, charges shall be assessed for all of that requestor's FOIA requests within that period.

This charge will be computed by multiplying the hourly rate of pay of the City staff responding to the request by the number of hours (or portions thereof) spent on the request. The hourly rate of pay shall not include benefits or overtime pay. All rates charged shall be appropriate for the person performing the work; for example, copying time shall be charged at the pay rate for an administrative staff member in the responding department. Only time spent accessing, duplicating, supplying, or searching for the requested records may be charged. The requestor shall not be charged for other time spent working on the request, including preparing cost estimates.

If no responsive documents are provided, either because they are entirely exempt or do not exist, then no personnel time shall be charged.

- *Postage*: Postage shall be charged at the actual cost.
- *Other charges*: The City shall not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the City's general business. Questions concerning the appropriateness of charges other than those set forth above shall be directed to the City's designated FOIA Officer, who will determine, in consultation with the City Attorney's Office, whether such charges are acceptable.

*Denial of Request due to Non-payment of Outstanding Costs.* If a requestor owes unpaid costs from a previous FOIA request, and such costs are more than thirty (30) days delinquent, then the City shall deny any new FOIA requests from that requestor until such costs have been paid in full, except in instances where the FOIA Officer determines the request can be processed with minimal staff time and further determines that the time and costs associated with responding with the requested information would be no more burdensome than documenting the requestor's delinquent status. The requestor shall be notified of such denial, and the amount of their outstanding balance in writing within five business days of the receipt of the request.

2. *Costs under \$10.00.* If the total costs for the requested records are less than \$10.00, then the costs shall be waived.

#### **F. Advance Estimates and Deposits**

1. *Request for an advance estimate.* The requestor has the right to request a cost estimate prior to the fulfillment of his or her request. If the requestor asks for a cost estimate to be provided prior to the fulfillment of his request, such estimate shall be provided to him or her as soon as possible, but in no case later than five business days from the date of his or her request.

The time limitations for responding shall be suspended between the time that the requested estimate is provided to the requestor and the time that the requestor notifies the City of his or her approval of the estimated costs. Once such notification is received, the FOIA time frame shall restart where it stopped. In no case shall the City request a time extension for the sole reason that the entire original five business days were used to create the cost estimate.

If the requestor does not request an advance cost estimate, the City may still, at its discretion, provide the requestor with an advance estimate; however, if the estimate is less than \$200.00, the five business day FOIA deadline may not be placed on hold pending the requestor's response.

2. *Advance Deposit.* If the costs for producing the requested records are determined in advance to be likely to exceed \$200.00, the City shall require that the requestor pay a deposit not to exceed the amount of the advance determination before the City fulfills the request. Such deposit shall be credited towards the final costs of supplying the requested records. The time limitations for responding are suspended between the date the City makes its request for deposit and the date that the deposit is provided.

#### **G. Response Format**

1. *Inspection or Copying.* The requestor has the option of inspecting or receiving a copy of the responsive records, at the requestor's choice. If the requestor does not specify whether he or she would like to inspect or receive copies of the records, the City shall provide copies. The requestor will still be responsible for costs incurred by the City in

fulfilling his or her request even if he or she elects to inspect, rather than receive copies of, the records. The FOIA Officer or FOIA Coordinator shall take all necessary precautions for the records' preservation and safekeeping.

2. *Document Format.* The City shall produce nonexempt records in the format requested in such cases that this does not require the City to create a new record to comply with the request.

When format is not specified by the requestor, a non-editable version of the documents shall be provided when possible. To minimize the requestor's costs, electronic copies shall be provided instead of paper copies when possible.

3. *Mailing format.* If the requestor asks for a specific method for receiving the documents (i.e. email, fax, or mail), every effort shall be made to accommodate the request. However, when such accommodation is not possible (for example, if a request for email is made and the documents are too large to send via email), an alternative method shall be used. The requestor shall be notified via the preferred method of communication that the documents are being sent by a different method.

When no mailing method is specified by the requestor, email shall be used when possible and convenient.

4. *Security.* When a responsive document contains sensitive or confidential information, and the response is emailed, then such response shall be sent via Send-It or other encrypted method, as advised by the IT Department.

## **H. Requests from Out-of-State Requestors**

FOIA requires that public records be open to 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. When a request is received from a person or entity that is not a member of one of those categories, the following shall occur:

1. If the request is related to an Environmental Site Assessment required pursuant to Chapter 17 of the Public Facilities Manual, the request shall be fulfilled. If the request is not fulfilled within five business days, then the requestor shall be notified in writing within that time frame that FOIA's five business day deadline will not apply. A final response shall be provided no later than fifteen business days after the receipt of the request.
2. If the request is for a copy of the report of an accident in which the requestor was involved as a driver, owner, injured party, insurer, or attorney of any of the afore-listed parties, then the request shall be fulfilled pursuant to Chesapeake City Code Sections 42.1-42.2. If the request is not fulfilled within five business days, then the requestor shall be notified in writing within that time frame that FOIA's five business day

deadline will not apply. A final response shall be provided no later than fifteen business days after the receipt of the request.

3. If the request is for the copy of bid records or proposal records and the requestor is a competitive sealed bidding bidder or competitive negotiation offeror, then the request shall be fulfilled pursuant to Chesapeake City Code § 54-75 and Virginia Code Section 2.2-4342. If the request is not fulfilled within five business days, then the requestor shall be notified in writing within that time frame that the FOIA's five business day deadline will not apply. A final response shall be provided within a reasonable time, as required by the Code sections mentioned above.
4. Requests from out-of-state requestors seeking records other than those described in subsections H(1)-(3) above shall be processed as follows: If the request will take thirty minutes or less of staff time to fulfill, the request shall be completed. If the request is not fulfilled within five business days, then the requestor shall be notified in writing within that time frame that the request does not qualify as a Freedom of Information Act request, that the City does intend to respond to the request, and providing an estimated time frame for the production of the requested documents. Normal FOIA requirements, including cost limitations, shall not apply.
5. If the request does not meet the criteria of any subsection (1) through (4), a written response shall be sent within five business days stating that the City declines to fulfill the request pursuant to Virginia Code Section 2.2-3704(A).

## **I. Exemptions**

1. *Exemptions under the Freedom of Information Act.* The Virginia Freedom of Information Act does not prohibit the disclosure of any public record, but does list records categories which are excluded from mandatory disclosure. The City will always claim all available exemptions from disclosure due to the sound public policies behind them. With the exception of FOIA requests which solely involve Police Department records, if a document is potentially subject to an exemption, the FOIA Coordinator must forward it to the FOIA Officer. The FOIA Officer shall determine, in consultation with the City Attorney's Office, whether to claim an exemption. No exemption may be waived without the approval of the FOIA Officer and City Attorney's Office. Examples of common exemptions which are always claimed by the City include, but are not limited to:
  - Account and routing numbers;
  - Names and contact information for complainants furnished in confidence with respect to an investigation regarding Zoning enforcement, Building Code violations, or Fire Code complaints;
  - Criminal investigative files;
  - Portions of non-criminal investigative materials with identifying personal, medical, or financial information;
  - The City Manager's working papers;

- Legal work product compiled for use in litigation or an active administrative investigation concerning a matter that is the subject of a closed meeting;
  - Legal advice and information protected by attorney-client privilege; and
  - Personnel information, unless the requestor is the subject of the records.
2. *Release Prohibited by Other Laws.* Other laws expressly prohibit the disclosure of certain records except under very limited circumstances. The City will withhold these types of records, except when legally required to release the information (e.g., pursuant to a court order). These records include, but are not limited to:
- Healthcare records, pursuant to Virginia Code Section 32.1-127.1:03 and the US Health Insurance Portability and Accountability Act;
  - The first five digits of social security numbers, pursuant to Virginia Code Section 2.2-3815;
  - Juvenile law enforcement records, pursuant to Virginia Code Section 16-301;
  - Tax records pursuant to Virginia Code Section 58.1-3;
  - Scholastic records, pursuant to the Family Educational Rights and Privacy Act of 1974; and
  - Social service agency records containing specific client information, pursuant to Virginia Code Sections 63.2-102 through 105 and Administrative Code Sections 22VAC30-100-50 and 22VAC40-705-160.
3. *Exempt portions of records.* When a portion of a responsive document contains exempt information, but the document as a whole is not exempt, the exempt portions of the document shall be redacted and the redacted document shall be provided in response to the request. No document shall be withheld in entirety from disclosure when only a portion of the document is exempt.
4. *City Attorney Review.* When exemptions are to be claimed, the City Attorney's Office must review and approve the exemption. Because of the volume of FOIA requests made to the Police Department and the experience of the Police Department staff, the following exemptions are not required to be approved by the City Attorney's Office, although the City Attorney's Office may always be consulted, before being invoked for records maintained by the Police Department:
- a. Exemptions of criminal incident information made under Virginia Code Section 2.2-3706(B)(1).
  - b. Exemptions of identifying information of a personal, medical, or financial nature in noncriminal records, made under Virginia Code Section 2.2-3706(D), where the release of the information would jeopardize the safety or privacy of any person, including:
    - i. Names;
    - ii. Contact Information;
    - iii. Social Security Numbers and/or Driver's License Numbers; and/or

iv. Medical Information.

- c. Exemptions of medical information from records required under Virginia Code Section 32.1-127.1:03.
- d. Exemptions of juvenile information from law enforcement records required under Virginia Code Section 16.1e301.
- e. Exemptions of the first five digits of Social Security Numbers required under Virginia Code Section 2.2-3815.
- f. Exemptions of information obtained from the Virginia Criminal Information Network (VCIN), as required by the VCIN Operating Manual issued by the Virginia State Police, under the authority of Virginia Code Section 52-15.

**J. Coordination of Requests Involving Multiple Departments**

Any FOIA request involving two or more City departments shall be forwarded to the City's FOIA Officer within one day of receipt for further handling. The FOIA Officer shall obtain documents from the FOIA Coordinators in each involved department and send one response to the requestor including all departments' responsive records.

**K. Requests from a Media Outlet**

Any FOIA request from a reporter or media outlet shall be forwarded to the City's FOIA Officer and Director of Public Communications within one day of receipt for further handling. The FOIA Officer shall coordinate the involved departments to create a response, and the Department of Public Communications shall handle contact with the reporter or media outlet.

**IV. Training**

**A. Freedom of Information Act Officers**

All FOIA Officers shall undergo annual training as required by Virginia Code Section 2.2-3704.2. This training may be received from the City Attorney's Office or from the Virginia Freedom of Information Advisory Council. The City Attorney's Office will offer such annual training upon request.

**B. Freedom of Information Act Coordinators**

The City's FOIA Officer shall conduct training for the Departmental FOIA Coordinators at least once per year. Such training shall consist of FOIA basics, the responsibilities of FOIA Coordinators, and any new or impending FOIA issues, including changes to FOIA

made by the General Assembly. The FOIA Officer shall also conduct training on an as-needed basis for newly-appointed FOIA Coordinators and current FOIA Coordinators who need additional information or assistance on certain topics.

### **C. Department and Division Heads**

The City's FOIA Officer shall conduct training for Department Heads at least once per year. Such training shall consist of FOIA basics, the responsibilities of City departments in responding to FOIA requests, and any new or pending FOIA management issues.

### **D. New Employees**

The Department of Human Resources shall provide a quick primer on FOIA basics, including the definition of a FOIA request, at New Employee Orientation. More in-depth information will be provided as needed by the FOIA Coordinator for the employee's department or division. Upon request, additional training shall also be provided by the FOIA Officer.

### **E. Current Employees**

The Departmental FOIA Coordinators shall be responsible for assisting employees within their departments or divisions in the identification of a FOIA request and in understanding each employee's responsibility in responding to a FOIA request. Additional training and education will be conducted by the City's FOIA Officer as needed or upon request.

## **V. Violations and Penalties**

### **A. Legal Penalties**

The Virginia Freedom of Information Act is enforced by an action for injunction in either the Circuit or the General District Court. If the court finds that a violation was willfully and knowingly made, then the court may impose a civil penalty against the individual at fault in the amount of \$500.00 to \$2,000.00 for a first offense, or in the amount of \$2,000.00 to \$5,000.00 for a subsequent offense. The Court also may award costs and attorney's fees to the petitioner.

### **B. Disciplinary Action by the City of Chesapeake**

If a City of Chesapeake employee willfully and knowingly commits a violation of the Freedom of Information Act, the City may take disciplinary action against the employee. Violations of the City's FOIA policy and procedures may also result in disciplinary action.