

**CITY OF CHESAPEAKE, VIRGINIA**

**NUMBER: 1.08**

**ADMINISTRATIVE REGULATION**

**EFFECTIVE DATE: 05/11/15**

**SUBJECT: CITY MANAGER'S OFFICE  
VIRGINIA FREEDOM OF INFORMATION ACT-  
PUBLIC RECORDS**

**SUPERSEDES: 05/23/00**

## **I. INTRODUCTION**

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 (the Act) was enacted by the General Assembly to ensure citizens of the Commonwealth of Virginia ready access to records in the custody of public officials, as well as free entry to meetings of public bodies in which the business of the people is being conducted. Such access shall also be 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.

## **II. PURPOSE**

The Act requires the City to respond within five (5) work days of receiving a request to inspect or copy public records. This regulation is established in order to clarify departmental responsibility for responding to requests, while also establishing a consistent, time-efficient method to be utilized when responding to requests. In addition, this regulation will provide departments with billing information necessary to fulfill certain types of requests.

## **III. RECORDS PROCEDURES**

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

All writings and recordings which 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 employees, officers or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

### **B. Custodian of Records**

Each department shall designate a primary custodian of records and a secondary custodian in the event the primary custodian is not available. The custodian of records is responsible for responding to records requests pursuant to this regulation and the Act. The department head is responsible for ensuring that the custodian

responds appropriately and that all requests are forwarded to the custodian. When there is any question about the proper response to a request, an extension of time to respond is needed, or if an exemption is to be claimed for all or any part of the records requested, the custodian must request assistance from the City Attorney's Office. When legal assistance is needed, the City Attorney's Office must be contacted as soon as possible, but not more than one (1) day after the records request is made. Additionally, if the request is from a member of the media, the Public Communications Department must be contacted as soon as possible, but not more than one (1) day after the records request is made.

C. Requests

Requests to inspect or copy public records may be in writing, in person, by telephone or electronically transmitted, but they need not make specific reference to the Act. The custodian shall require the requester to provide his or her name and legal address, and in the case of a media request, the media outlet represented. 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 requester for confirmation. There should be a written record of all requests for clarity and future confirmation if necessary. Also, the date of the request must be recorded in order to make an appropriate response within the time limitation.

Requests which require response from multiple departments should be handled by the appropriate custodians in cooperation with one another, the City Attorney's Office as needed, and in the case of a media request, the Public Communications Department. The lead department in such case will be the recipient of the request.

A copy of all requests must be forwarded to the Deputy City Manager supervising the receiving department, or the City Manager for his/her direct reports, not more than one (1) day after the request is made. Deputy City Managers or the City Manager may waive this requirement for certain types of routine requests (e.g., requests for copies of police accident reports).

Before processing a request for records, the custodian shall require the requester to pay any amounts owed the City for previous requests for records that remain unpaid 30 days or more after billing.

D. Response

A response to a request for public records must be made within five (5) work days after receipt of the request. As an example, in a week with no City holidays, this means that a request received on a Monday must be responded to no later than the following Monday. It is important to note the exact date of the request, since the failure to respond constitutes a denial of the request and a violation of the Act. The

custodian of the records shall take all necessary precautions for their preservation and safekeeping.

One of the following responses must be made within the five (5) work day period:

1. In accordance with the specific request, the requested records are provided for inspection by, or copies are made for, the requester.
2. 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 the Act. Such response shall (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific Code of Virginia section that authorizes the withholding of the records.
3. The requested records are being provided in part and withheld in part because the release of part of the records is prohibited by law or the City has exercised its discretion to withhold a portion of the records in accordance with the Act. Such response shall (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of withheld records, the specific Code of Virginia section which authorizes the withholding of the records. When a portion of a requested record is withheld, the City may redact or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.
4. The requested records could not be found or do not exist. However, if the custodian knows that another public body has the requested records, the response shall include contact information for the other public body.
5. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall (i) be in writing and (ii) specify the conditions which make a response impossible. If the response is made within five work days, the City shall have an additional seven (7) work days in which to provide one of the four preceding responses.

E. Billing

Reasonable charges will be made to the requester in order to recover the City's actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. Requesters will be advised at the time of the request, or as soon thereafter as practicable, that charges will be assessed. All charges for the supplying of requested records shall be estimated in advance at the request of the requester.

Generally applicable charges are as follows:

1. Copy Charge

\$0.10 per copy for 8 1/2" x 11" or 8 1/2" x 14" paper; additional charges will apply for copies of plan sheets or other non-standard copies.

2. Personnel Time Charge

If requested records can be retrieved from departmental files and copied in less than fifteen (15) minutes, there will be no charge for personnel time. If fifteen (15) minutes or longer is required to search for, retrieve and/or copy requested records, a charge for personnel time is to be assessed.

The charge for personnel time shall be computed by determining the hourly rate of pay of City staff responding to the request and multiplying that rate by the number of hours, or portions thereof, spent on the response. Rates charged shall be appropriate for the work actually performed. For example, time spent making copies shall be charged at the pay rate for an office assistant or similar position in the responding department, not a professional pay rate.

3. 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 in subsections (1) and (2) above shall be directed to the City Attorney's Office.

4. Advance Payment:

If the charges for producing the requested records are determined in advance to be likely to exceed \$200, the City will require that the requester pay a deposit not to exceed the amount of the advance determination before continuing to process the request. The deposit shall be credited toward the final cost of supplying the requested records. Until the requester responds to the City's notice of advance determination, the time limitations for responding are suspended.

F. Exemptions

The Act does not prohibit the disclosure of any public record. However, it does list categories of records which are excluded from the general disclosure requirements. As a general practice, the City will claim the exemptions listed in the Act because of the sound public policies behind such exemptions. Some examples of commonly

claimed exemptions are:

- Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution
- Personnel records containing information concerning identifiable individuals, except that an employee's own personnel record is accessible to that specific employee
- Records recorded in or compiled exclusively for use in closed meetings of City Council, the Planning Commission and other boards and commissions
- Computer software developed by or for the City
- 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
- Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed
- Written advice of the City Attorney, Deputy City Attorneys and Assistant City Attorneys, and any other records protected by the attorney-client privilege
- Working papers and correspondence of the City Manager ("Working papers" are defined as those records prepared by or for the City Manager for his personal or deliberative use.)
- Portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body

G. Other Laws

While claiming exemptions under the Act is discretionary, other laws prohibit disclosure of certain records except in very limited circumstances. These records include:

- Tax returns and other tax records that reveal information about the income or business of the subject
- Scholastic and medical records

- Court and probation records involving juveniles
- Records of social service agencies containing information about specific clients

The City Attorney's Office should be consulted with any questions about laws which prohibit disclosure of certain types of records.

**IV. ENFORCEMENT**

The Act is enforced by an action for injunction in either the general district or circuit court. If the court finds a violation of the Act, costs and attorney's fees from the public body will be awarded to the petitioner unless found unjust. A willful and knowing violation of the Act could result in a civil penalty for individuals from \$500 to \$2,000. Second or subsequent violations may result in individual civil penalties from \$2,000 to \$5,000.

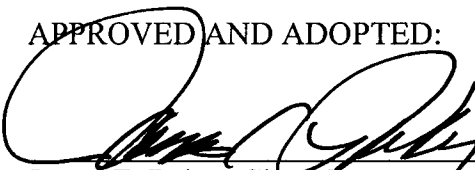
Any employee who is assessed a civil penalty for a willful and knowing violation of the Act must pay the penalty out of his or her personal funds and will be subject to disciplinary action up to and including termination of employment.

APPROVED AS TO FORM AND CONTENT:

  
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Dana E. Sanford, Deputy City Attorney

5.5.15  
\_\_\_\_\_  
Date

APPROVED AND ADOPTED:

  
\_\_\_\_\_  
James E. Baker, City Manager

5/10/15  
\_\_\_\_\_  
Date