

CITY OF CHESAPEAKE, VIRGINIA

NUMBER: 1.08

ADMINISTRATIVE REGULATION

EFFECTIVE DATE: 10/1/18

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

SUPERSEDES: 5/11/15

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 (FOIA) was enacted by the General Assembly to ensure citizens of the Commonwealth of Virginia ready access to public 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

This regulation is intended as an abbreviated version of the City's Freedom of Information Act Guidelines and Procedures. It is established in order to clarify the roles and responsibilities in the FOIA request process, identify allowable responses to FOIA requests, and create billing guidelines. It is not intended to be a complete recitation of the City's FOIA procedures. Please refer to the City's Freedom of Information Act Guidelines and Procedures for more detailed information.

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, photostatting, 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. This includes records created in the transaction of public business that are stored on personal devices.

B. 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. As constitutional officers, the City's Clerk of the Circuit Court, Commissioner of the Revenue, Commonwealth's Attorney, Treasurer, and Sheriff have designated FOIA Officers for each of their respective offices.

The primary responsibilities of the FOIA Officers are to serve as a point of contact for FOIA requests and to coordinate the City's compliance with the provisions of FOIA. Additional duties and responsibilities are outlined in the City's Freedom of Information Act Guidelines and Procedures.

The names and contact information for all FOIA Officers shall be posted on the City of Chesapeake's website and submitted to the Virginia FOIA Advisory Council.

C. FOIA Coordinators

Each department shall designate at least one primary FOIA Coordinator and a secondary FOIA Coordinator in the event the primary Coordinator is not available. The FOIA Coordinator is primarily responsible for responding to, or coordinating with the FOIA Officer to respond to, records requests pursuant to this regulation and the Act. Additional duties and responsibilities of the FOIA Coordinators are outlined in the City's Freedom of Information Act Guidelines and Procedures.

D. Requests

Any request for public records submitted to the City shall be treated as a Freedom of Information Act (FOIA) request, regardless of the form of the request or whether the requestor invokes the provisions of the Freedom of Information Act while making the request. The FOIA Coordinator shall require the requestor 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 requestor for confirmation. Every City employee shall treat a request for public records as defined in Section III.A as a FOIA request and should route all FOIA requests to their department's FOIA Coordinator.

Each FOIA Coordinator and FOIA Officer should keep a written record of 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 Coordinators in cooperation with the City's FOIA Officer, the City Attorney's Office as needed, and in the case of a media request, the Public Communications Department. The FOIA Officer will act as the lead in responding to the request.

Except for requests that involve Police Department records only, the FOIA Coordinator must request assistance from the City's FOIA Officer when an extension of time to respond is needed, an exemption is to be claimed for all or any part of the records requested, or if there is any question about the proper response to a request. When legal assistance is needed, the City Attorney's Office must be contacted as soon as possible. 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) business day after the records request is received.

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

E. Response

A response to a request for public records must be made within five business days after receipt of the request. 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 FOIA Coordinator shall take all necessary precautions for the records' preservation and safekeeping.

One of the following responses must be made within the five business day period:

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 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.
4. The requested records could not be found or do not exist. However, if the FOIA Officer or Coordinator 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 business 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 business days, the City shall have an additional seven business days in which to provide one of the four preceding responses.

A public record may be withheld in its entirety only to the extent that an exemption or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exemption or other provision of law may be withheld, and all portions that are not so excluded shall be disclosed.

Please see the City of Chesapeake's Freedom of Information Act Guidelines and Procedures for more information on responding to FOIA requests.

F. Billing

Reasonable fees will be charged to the requestor in order to recover the City's actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. Additional information regarding billing for costs associated with FOIA requests can be found in the City's FOIA Guidelines and Procedures.

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 personally 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.

APPROVED AS TO FORM AND CONTENT:



Dana E. Sanford, Deputy City Attorney

9.26.2018
Date

APPROVED AND ADOPTED:



James E. Baker, City Manager

9/26/18
Date