

The Rights of Requesters and the Responsibilities of Stafford County Sheriff's Office under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), found in Virginia Code § 2.2-3700 et seq., 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, an electronic file, an audio or video recording, or any other format -- that is prepared or 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 its provisions be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Requester's 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 general district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for Records from Stafford County Sheriff's Office

- You may request records by mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA. Nevertheless, the Sheriff's Office would prefer requests to be submitted in writing.
 - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives the Sheriff's Office a clear statement of what records you are requesting. However, the Sheriff's Office cannot refuse to respond to your FOIA request if you elect to not put 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 that you be specific enough so that the Sheriff's Office can identify and locate the records that you are seeking.

- You may only request existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to general questions about the work of the Sheriff's Office and its employees, nor does it require the Sheriff's Office to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Sheriff's Office in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.
- If the Sheriff's Office 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 request. We may need to discuss your request with you to ensure that we understand what records you are seeking.
- The Sheriff's Office shall comply with the following procedures for processing a FOIA request.
 - FOIA requests should be directed to the FOIA Officer in the Stafford County Sheriff's Office, as the centralized receiving center for FOIA requests.
 - By mail: Stafford County Sheriff's Office
 ATTN: FOIA
 PO Box 189
 Stafford, VA 22555
 - Fax: (540) 658-8570
 - Phone: (540) 658-4420
 - E-mail: records@staffordcountyva.gov
 - If you have questions regarding accessing records from the Sheriff's Office, please contact the FOIA Officer at (540) 658-4420.
 - 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 e-mail at foiaacouncil@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] (866) 448-4100.

Sheriff's Office Responsibilities in Responding to Your Request

- The Sheriff's Office must respond to your request within five (5) working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.

- The reason behind your request for public records from the Sheriff's Office is irrelevant, and you do not have to state why you want the records before the Sheriff's Office responds to your request. FOIA does, however, allow the Sheriff's Office to ask you to provide your name and legal address.
- FOIA requires that the Sheriff's Office make one of the following responses to your request within the five-day period:
 - Provide you with the records that you have requested in their entirety.
 - Withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the Sheriff's Office will send you a response in writing. That writing will identify the volume and subject matter of the records being withheld, and state the specific section of the Virginia Code that allows the Sheriff's Office to withhold the records.
 - Provide some of the records that you have requested, but withhold other records. The Sheriff's Office cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the Sheriff's Office may redact the portion of the record that may be withheld, and will provide you with the remainder of the record. The Sheriff's Office will provide you with a written response stating the specific section of the Virginia Code that allows portions of the requested records to be withheld.
 - Inform you in writing that the requested records cannot be found or do not exist (the Sheriff's Office does not have the records you want).
 - If it is practically impossible for the Sheriff's Office to respond to your request within the five-day period, the Sheriff's Office will state this in writing, explaining the conditions that make the response impossible. This will allow the Sheriff's Office seven (7) additional working days, for a total of twelve (12) days, to respond to your request.
- If you make a request for a very large number of records, and the Sheriff's Office feels that it cannot provide the records to you within twelve (12) working days without disrupting its other organizational responsibilities, the Sheriff's Office may petition the Circuit Court for additional time to respond to your request. Prior to petitioning the court, FOIA requires that the Sheriff's Office make a reasonable effort to reach an agreement with you concerning the time for producing the records.

Costs

- Pursuant to Virginia Code § 2.2-3704.1, 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 supply of requested records shall be estimated in advance at the

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

- You may have to pay for the records that you request from the Sheriff's Office. FOIA allows the Sheriff's Office 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. It cannot include general overhead costs.
- If the Sheriff's Office estimates that it will cost more than \$200 to respond to your request, the Sheriff's Office will require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five (5) days that the Sheriff's Office has to respond to your request does not include the time between when the Sheriff's Office asks for a deposit and when you respond.
- All deposits shall be paid by check or money order made payable to Stafford County Sheriff's Office and delivered to the FOIA Clerk. Checks and money orders will be held and only deposited once the request is complete. Any outstanding balance due must be paid before or at the time the responding records are released. Any balance remaining from the deposit shall be returned to the requester.
- You may request that the Sheriff's Office estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs. The statutory time limits provided do not begin to run until you give the County permission to proceed, approving the estimate or by paying the deposit as required above.
- If you owe the Sheriff's Office money from a previous FOIA request that has remained unpaid for more than 30 days, the Sheriff's Office may require payment of the past-due bill before it will respond to your new FOIA request.
- The fees charged for staff response time shall be based on the actual amount of time individually spent responding to the FOIA request.
 - Time of officers, department heads, and staff who are paid hourly, shall be charged based on the following formula:
$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times (\text{Hourly pay})$$
 - Time of officers, department heads, and staff who are salary, shall be charged based on the following formula:
$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times \frac{(\text{Yearly salary})}{(52 \text{ weeks} \times 40 \text{ hr/wk})}$$
 - The Sheriff's Office will take all reasonable precautions to keep staff time and cost at a minimum, including using lower paid staff members capable of retrieving records to respond to a request. However, in situations where a staff member is required to search through his/her own email and files contained on his/her individual County computer or other device, it shall not be unreasonable for that individual staff member to retrieve the

requested records and charge a FOIA response fee corresponding to his/her salary.

- Fees charged for supplies, duplications, etc. shall be as follows:
 - Copies \$.02 per page
 - Compact Disc \$.30 per C.D.
 - Mail Actual cost to mail the request

Commonly used Exemptions

The Virginia Code allows any public body to withhold certain records from public disclosure. Stafford County Sheriff's Office commonly withholds records subject to the following exemptions:

- Virginia Code 2.2-3706
- Virginia Code 2.2-3705.1
- Virginia Code 2.2-3705.3

For a full list of exemptions, *see* Virginia Code § 2.2-3700

Policy regarding the use of Exemptions

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