

***INSIDE THE VIRGINIA FREEDOM OF INFORMATION ACT
FAIRFAX COUNTY PUBLIC SCHOOLS FOIA GUIDELINES***

I. The Virginia Freedom of Information Act

The Virginia Freedom of Information Act (VFOIA), Section 2.2 -3700 et seq., is the state law governing access to public records and entry into meetings of public bodies for citizens of the Commonwealth. VFOIA guarantees Virginia residents and representatives of the media access to public records held by public bodies, public officials, and public employees. All public records are presumed to be open and may only be withheld if a specific statutory exemption applies.

II. Purpose

The purpose of this document is to set forth a uniform procedure for processing and responding to requests for public records made under VFOIA.

III. Scope and Definitions

- A. Requests for public records, whether made verbally or in writing should always be treated as formal requests. The requestor does not have to use the term “FOIA” when making a request.
- B. Only existing public records are subject to disclosure under the terms of VFOIA. Neither these guidelines nor VFOIA requires that new public records be created to provide the requested information or answer questions. (Va. Code § 2.2-3704 (D))
 - a. If the data requested is available in a computer database, producing a query to generate a report is not deemed to be the production of a new record.
- C. A public record is defined as something written, such as e-mails, spreadsheets, hand-written notes, etc., or recording, regardless of whether it is a paper record, an electronic file, an audio or video recording, or in any other format that is owned or prepared by, or in the possession of, a public body or its officers, employees, or agents in the transaction of public business..
- D. A working day is a day in which Fairfax County Public Schools (FCPS) offices are open. FCPS Central Office hours are 8 a.m. - 4:30p.m.
- E. Federal Education Rights and Privacy Act (FERPA) is the federal law protecting the access of student records from individuals other than the parents of the student or an eligible student.

IV. FOIA Process

A. Statutory Requirements

- a. VFOIA requires a response within five (5) working days of receipt of the request. Day one is considered the first working day after a request has been received. A requestor may choose to review records in the office or to receive copies of the records. If it is not practically possible to respond within 5 working days, an extension of an additional seven working days may be requested.

- b. There are 5 possible responses to a VFOIA request. All responses must be made in writing. If applicable, the response should also properly cite and include the Code of Virginia or applicable statute citation for the exemption.
 - i. The requested records are being provided and are enclosed.
 - ii. The requested records are being provided in part and withheld in part because the release of part of the records is prohibited by law. The response must include the appropriate citation for the exemption, the approximate volume and subject matter of the withheld records.
 - iii. The requested records are being withheld in their entirety because their release is prohibited by law or FCPS has exercised its discretion to withhold the records in accordance with VFOIA or applicable statute.
 - iv. It is not practically possible to produce the records within five working days and FCPS will need to invoke the seven-day extension. The extension must be made in writing and will add seven working days to the response time, totaling 12 working days. The extension “shall specify the conditions that make a response within 5 working days impossible.” Va. Code § 2.2-3704 (B)(4).
 - v. The requested records could not be found or do not exist.
- c. Requests for records must be made with reasonable specificity (Va. Code § 2.2-3704(B)). This does not refer to or limit the volume or number of records that can be requested; however, it requires that the requestor be reasonably specific enough so that the appropriate records can be located. If the request is unclear or appears overly broad, the FOIA Officer will contact the requester to ascertain exactly what public record is being sought. This will serve to minimize search time by FCPS personnel and save citizens time and cost in receiving and reviewing public records.
- d. Unless otherwise agreed by all parties, all responses shall be made within the time required by VFOIA. If it is not possible to respond to a request within twelve working days and, after reasonable efforts, an arrangement cannot be reached with the requestor for additional time, the FOIA Officer will consult with the FCPS Division Counsel’s Office, which may be able to petition a court for additional time. If the requestor and the FOIA Office agree to a response time not in conformance with the Code of Virginia, such agreement shall be in writing.
- e. Requests for records pertaining to a specific student shall be processed per FERPA guidelines.

B. FCPS Departmental/School Contact Procedures

Based on the subject of the VFOIA request, the FOIA Officer will send the request to the departmental or school-based contact. The FOIA Office may also notify principals and/or region assistant superintendents of the request, when appropriate. The departmental or school-based contact should review the request and work with the FOIA Officer, staff in that

department, the school and/or other departments, as needed, to supply the records requested.

- a. The FOIA Officer will notify the appropriate Leadership Team (“LT”) member, LT Executive Administrative Assistant (LTEAA) staff and/or principal of the VFOIA request. The FOIA Officer will notify the appropriate LT member, the LTEAA and /or principal, if applicable, of FCPS employees who are the subject of a VFOIA request.
- b. The FOIA Officer will set a deadline for receipt of the records and ask for an estimate of time required to fulfil the request.
- c. The departmental or school-based contact will inform the FOIA Officer of the estimated staff time to fulfil the VFOIA request within 24 hours of receipt of the notification of the request.
- d. The individual, department, or school in possession of a document that is the subject of a VFOIA request are asked to produce the documents as soon as possible but no later than three working days to allow the FOIA Office to review and prepare the documents for release. FCPS is legally obligated to respond to a request within five working days, as required by the Code of Virginia, unless an extension has been requested.
- e. If there are issues concerning the timeline and release of public records, the departmental or school-based contact must notify the FOIA Officer and LT member immediately.
- f. If the office/department/school cannot provide the records within the specified time frame, they must notify the FOIA Office and LT member or principal immediately.
- g. The FOIA officer will request an extension from the requestor, if needed.
- h. Once the records are received from a department or school, the FOIA office will review and redact all records.
- i. FERPA requests that do not seek e-mails will be handled by the school. School personnel may ask the FOIA Office for assistance in complying with a FERPA request.

C. Costs

The salary of the individual processing the request shall not include benefits. All requests may be charged the following costs:

- a. Copies - A charge of \$0.20 (twenty cents) per printed page.
- b. USB Flash Drives - \$2.50 (two dollars fifty cents) per flash drive.
- c. Any other media or non-standard paper size - FCPS’ actual cost.
- d. Redaction - FCPS may charge for time spent redacting records.
- e. Postage - If the requesting party desires the records be shipped or mailed, the actual cost of such postage shall be charged to the requestor.
- f. Labor – For basic preparation of requests such as photocopying, duplication, redaction, and mailing, FCPS will charge a standard administrative hourly rate (\$35). For requests requiring research, technical support, legal review, or specific expertise for the requested record(s), the hourly wage of the employee who has the skills needed will be charged.
- g. Email Review - \$35 per hour and most email review takes approximately 4-5 hours per email account.

- h. Legal - If the request requires legal review to assure that the records are responsive, are not exempt from disclosure, and may be disclosed without violating any other provision of law, the actual cost of the legal exclusion review may be charged to the requestor (*see American Tradition Inst. v. Rectors and Visitors*, 287 Va. 330,756 S.E.2d 435 (2014)). The Division Counsel Office shall inform the FOIA Officer of the amount to be charged for legal review.

D. Release of Records

The FCPS FOIA office is responsible for the response and release of records.

- a. Responses may be made in paper or electronic form.
- b. If the cost to respond is less than \$200, the records may be provided to the requester with a bill due upon receipt.
- c. If the estimated costs for producing public records exceed \$200, the FOIA Officer will notify the requester and require a 50% deposit of the full amount of the estimate prior to fulfilling the request. If the response costs more than the estimated amount, the FOIA Office will notify the requester and require payment of the balance due prior to the release of records.
- d. If the requester does not pay the required deposit within 30 days of being notified of the estimate, the request is considered withdrawn.
- e. After 30 days, no public records shall be released to the requester until any unpaid balance on previous requests has been made. The FOIA office shall create and maintain a list of persons having unpaid FOIA request charges, which shall be available to all departments and schools upon request.

E. Legal Issues

Any department having questions about the application of VFOIA to a request for public records may contact the FOIA Office which shall render guidance as appropriate and will consult with the Division Counsel's Office as necessary.

F. FOIA Log

The FOIA Officer shall maintain a log of VFOIA requests, and those fulfilled, to be shared with the FCPS leadership team on a weekly basis. The log may be made public at the discretion of FCPS.