



## DIRECTOR'S POLICY #100-04 RELEASE OF INFORMATION

Effective Date: December 6, 2011

Approved By:

**I. PURPOSE:** The purpose of this policy is to provide Department of Professional and Occupational Regulation employees with guidelines for responding to requests for information. As a Department guidance document, it is intended to provide the public with a general understanding of DPOR's record disclosure practices.

**II. POLICY STATEMENT:** Pursuant to the [Virginia Freedom of Information Act](#) (§2.2-3700 et seq. of the *Code of Virginia*), the Department of Professional and Occupational Regulation assumes a predisposition toward full disclosure of all public records in the Department's possession. Specific exclusions shall apply in accordance with [§54.1-108](#) and [§§2.2-3705.1 through 2.2-3705.8](#) of the *Code of Virginia* and, in the absence of any board policy to the contrary, when the Department exercises its discretionary authority to withhold personal or confidential information that may compromise an individual's or businesses' safety and security. A subpoena duces tecum for the production of records shall be processed in accordance with [Director's Policy #100-06, Subpoenas, Service of Process and Notices](#).

### III. DEFINITIONS:

**Personal information** As defined in § 2.2-3801 of the *Code of Virginia* is information that (i) describes, locates or indexes anything about an individual including, but not limited to, his social security number, driver's license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

**Public record** Recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium (e.g., electronic documents and mail) on which such information is recorded has no bearing on the determination of whether the record is a public record or whether it is subject to public disclosure.

**Record Custodian** A public official or official designee in charge of an office housing public records.

**IV. RELATED DOCUMENTS:**

- [Virginia Freedom of Information Act](#)
- [Government Data Collection and Dissemination Practices Act](#)
- [Director's Policy #100-06 Subpoenas, Service of Process and Notices](#)

### V. GENERAL PROVISIONS:

#### A. CUSTODIAN OF RECORD

1. The Records and FOIA Manager shall serve as the custodian of all Department records with specific positions designated as custodians for disclosure and authentication purposes. In the absence of the designated custodians, the Records and FOIA Manager and the Information Management Director shall authenticate records for court submission.

2. The following individuals shall serve as custodians of record created, processed and/or maintained by their respective sections. These individuals shall designate a backup custodian to perform record authentications in their absence.
  - a. Executive Directors in the Licensing and Regulation Division
  - b. Compliance and Investigations Directors (Investigations, Alternative Dispute Resolution, Complaint Analysis and Resolution, Adjudication and Fair Housing). Field Supervisors and Investigators shall be designated as record custodians for court-submitted licensing and investigation records.
  - c. Human Resources Director
  - d. Administration Director
  - e. Finance Director
  - f. Education and Examinations Director

**B. RESPONDING TO INFORMATION REQUESTS**

1. All requests for records (electronic and paper) are subject to the provisions of the Virginia Freedom of Information Act. A requester is not required to reference FOIA in order to be subject to the provisions of the Act.
2. Generally, DPOR does not require FOIA requests to be submitted in writing; however, in situations where the requested records are not identified with reasonable specificity (*Code of Virginia* §2.2-3704.B), DPOR may require a detailed written or e-mail request to ensure accurate response preparation.
3. To prepare a response within five workdays of receipt, immediate delivery of a FOIA request to the appropriate (responsible) section is essential. The first workday following receipt of the request is considered day one when calculating the response deadline.
4. The Records and FOIA Manager shall make all decisions concerning routine FOIA requests and provide guidance to DPOR staff in determining the appropriate response to information requests. Specific exclusions shall apply in accordance with [§54.1-108](#) and [§§2.2-3705.1 through 2.2-3705.8](#) of the *Code of Virginia* and any applicable board or agency policies. Non-routine FOIA requests from the general public shall be communicated to the Information Management Director. Non-routine requests from the media and elected officials shall be communicated to the Communications Director.
5. In accordance with §2.2-3704.F of the *Code of Virginia*, DPOR may assess reasonable charges for the actual costs associated with accessing, duplicating, supplying or searching for records. Documents requested by a federal, state or local governmental or law-enforcement agency shall be provided at no cost. Furthermore, pursuant to §2.2-3704.H unless approved by the Information Management Director, Deputy Director or Director, DPOR shall require advanced payment for requests that are likely to exceed \$200 prior to preparing the response. Photocopies are available for \$.25 per page for 40 or more pages. Copies of less than 40 pages shall be available at no charge.
6. Pursuant to §2.2-3704.I of the *Code of Virginia*, before processing a request for records, DPOR may require payment of any amount owed for previous FOIA requests that remain unpaid for at least 30 days. A letter requesting payment prior to providing additional records shall be mailed within five workdays of receiving the new request.

**C. RECORD CATEGORIES AND FOIA RESPONSE ASSIGNMENTS**

**1. Applications**

Direct record requests to: Information Management (formerly Policy, Planning and Public Records) Section

Generally, applications for admission to examinations or for licensure are exempt from public disclosure (§54.1-108.2 of the *Code of Virginia*). Applications include initial, reinstatement and upgrade applications, as well as license maintenance documents that include social security numbers or other personal information. However, applications are subject to disclosure when:

- a. Requested by the actual regulant/applicant (or any party authorized by the regulant or applicant). The regulant or their representative may obtain copies of their own applications for admission to examinations or for licensure (§54.1-108.2 of the *Code of Virginia*).

Policy Title:	Director's Policy #100-04 Release of Information	[POL401-100_04-v13]	Effective:	12/06/2011
Submitted By:	Dawn Waters, Information Management Director		Guidance Document:	Yes
Supersedes:	Director's Policy #100-04 Release of Information (Effective 09/18/2009)			Page 2 of 7

- b. Requested by agencies in another state, district, or territory of the United States where the information is requested by the state, district, or territory in connection with an application for a service, privilege or right under their laws. Requests shall be made in a manner that authenticates the requester's affiliation (on official letterhead or by e-mail) and state the reason for the request.
- c. Requested by any federal, state or local law enforcement agencies to be used in conjunction with an investigation or authentication of credentials. Requests shall be made in a manner that authenticates the requester's affiliation (on official letterhead or by e-mail) and state the reason for the request. A letter or e-mail from the Department must accompany the information verifying that DPOR is releasing this information for investigative or authentication purposes only.

2. Bonds

Direct record requests to: Licensing Section

Copies of and information related to performance bonds required for licensure (including the amount of the bond and the issuer) are subject to public disclosure upon request.

3. Certifications of Regulant Status

Direct record requests to: Licensing Section

Individual licensing sections are responsible for preparing Certifications of Regulant Status in accordance with DPOR [Licensing and Regulation Procedure #903, Certifications of Regulant Status](#).

4. Complaint Files

Direct *information* requests to: Compliance and Investigations Division

The Compliance and Investigations Division is responsible for responding to general inquiries regarding the number and nature of complaints against a specific respondent. Open complaints may be publicly acknowledged when a Department investigation has determined that sufficient evidence exists to establish probable cause that there was a violation of a law or regulation; however, the case file is exempt from disclosure until case closure. Cases where probable cause has been found are disclosed on the Department's web site. Nothing in this policy shall conflict with the release of complaint information during disciplinary investigations as provided for in the Administrative Process Act.

Direct *record* requests to: Information Management (formerly Policy, Planning and Public Records) Section

a. Closed case files are subject to public disclosure with the following exclusions:

1) Application Case Files

Application file information resulting in licensure shall be transferred to the license application file and handled according to [Section V.C.1](#) of this policy.

2) Criminal (Unlicensed Activity) Case Files

a) Criminal incident information as defined in §2.2-3706.A of the *Code of Virginia* and closed unlicensed cases may be exempt from public disclosure when the release is likely to jeopardize an ongoing investigation or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence. No exclusion applies when disclosure is not likely to cause the above-referenced damage.

b) The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

3) Alternative Dispute Resolution Files

All memoranda, work products or other materials contained in the case file of a mediator are confidential and all materials in the case file of a mediation program pertaining to a specific mediation are confidential. Any communication made in or in connection with mediation, that relates to the dispute, including communications to schedule mediation, whether made to a mediator, a mediation program, a party, or any other person is confidential.

Policy Title:	Director's Policy #100-04 Release of Information	[POL401-100_04-v13]	Effective:	12/06/2011
Submitted By:	Dawn Waters, Information Management Director		Guidance Document:	Yes
Supersedes:	Director's Policy #100-04 Release of Information (Effective 09/18/2009)			Page 3 of 7

Confidential materials and communications are not subject to the provisions of the Virginia Freedom of Information Act, nor discovery in any judicial or administrative proceeding unless permitted under [§2.2-4119](#) of the *Code of Virginia*.

- b. The Information Management Section is responsible for preparing closed disciplinary and fair housing complaint files in response to FOIA requests. Prior to releasing closed files, information exempt from public disclosure per [Section V.E](#) of this policy shall be removed or redacted.
- c. Open case files are exempt from public disclosure under the provisions of §54.1-108.3 of the *Code of Virginia*. Nothing in this policy shall conflict with the release of complaint information during complaint investigations as provided for in the Administrative Process Act.
- d. Orders (final and consent) and written settlement agreements resulting from a voluntary administrative dispute resolution proceeding e.g., conciliation, mediation or facilitation are subject to public disclosure unless the involved parties agree in writing that the agreement is to remain confidential and the respective board determines that disclosure is not required to further the purposes of the law.
- e. Due to the public forum in which an informal fact-finding conference is held, IFF transcripts contained in case files (both open and closed) are subject to public disclosure. Open file IFF transcripts may be released by Board Administrative Proceedings (BAPS) and Compliance and Investigation Division (CID) staff.

5. Contracts and Procurement Records

Direct record requests to: Administration Section

Procurement and contract records may be released in accordance with §2.2-4342 of the *Code of Virginia*.

6. Electronic Mail

Direct record request to: Custodian of Record

All documents sent or received on the state electronic mail system and any associated attachments are subject to public disclosure. Specific exclusions shall apply in accordance with [§54.1-108](#) and [§§2.2-3705.1 through 2.2-3705.8](#) of the *Code of Virginia* and any applicable board or agency policies. When responding to requests for electronic mail, the content of the e-mail transmission shall be used to determine if the record is subject to any disclosure exemptions.

7. Examination Information

Direct record requests to: Examinations Section or Information Management (formerly Public Records) Section

- a. Examination questions, papers, booklets, answer sheets and scoring keys are exempt from public disclosure pursuant to §54.1-108.1 and §2.2-3705.1.4 of the *Code of Virginia*, except in situations where the Department deems that the validity or security of future examinations will not be compromised. At the discretion of the Executive Director, examination information may be released to other state agencies.
- b. Examination scores may be released to candidates or other jurisdictions (on Certifications of Regulant Status) if permitted by board regulations and policy.

8. Financial Records

Direct record requests to: Finance Section

Requests for records maintained by the Finance Section shall be submitted to the Finance Director.

9. Governor's Working Papers

Direct record requests to: Custodian of Record

Reports, projects, correspondence and other documents classified as working papers of the Office of the Governor, Lieutenant Governor, the Attorney General, the members of the General Assembly, or the Division of Legislative Services are not subject to public disclosure.

## 10. Legal Documents

Direct record requests to: Custodian of Record

- a. Written advice of legal counsel to DPOR or the officers or employees of the Department, and any other related correspondence are protected by attorney-client privilege and therefore, not subject to public disclosure.
- b. Legal memoranda and other work products compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under §2.2-3711 are exempt from public disclosure.

## 11. License Maintenance Records

Direct record requests to: Information Management (formerly Public Records) Section

License maintenance records such as name and address changes, fee payment records and renewal cards are subject to public disclosure with the redaction of any information exempt from public disclosure per [Section V.E](#) of this policy.

## 12. License Transcripts

Direct record requests to: Information Management (formerly Public Records) Section

- a. License Transcripts summarize the activity associated with the license, certification or registration from initial date of licensure through fee/license expiration date. Usually prepared for court submission, License Transcripts are frequently used as an alternative to Department staff providing personal testimony regarding a specific license or lack thereof. They are prepared by the Information Management Section and authenticated by the appropriate licensing section. Other information prepared by Information Management for court in lieu of testimony include copies of official records (orders, regulation booklets, etc.) authenticated in accordance with [§54.1-112](#) of the *Code of Virginia*.
- b. License Transcripts are available for a fee of \$40.00 per requested individual/business entity name; however, no fee shall be charged to organizations providing legal aid to the indigent or governmental/law enforcement agencies participating in an active criminal investigation.
- c. Upon request (from DPOR staff or a Commonwealth Attorney), License Transcripts may be prepared and authenticated by field investigators and regional supervisors to corroborate investigator testimony.

## 13. Meeting Minutes and Documents

Direct record requests to: Licensing Section or Information Management (formerly Public Records) Section

- a. Draft minutes of public meetings are available on the Department website and the Commonwealth Calendar no later than ten workdays following conclusion of the meeting (§2.2-3707.1 of the *Code of Virginia*). Final meeting minutes are available within three workdays of final approval of the minutes.
- b. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to §2.2-3711 are not subject to public disclosure. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

## 14. Personnel Records

Direct record requests to: Human Resources Section

- a. All requests for individual employee records shall be handled by the Human Resource Section according to the provisions of the [Department of Human Resource Management Policy 6.05 Personnel Records Disclosure](#), the Virginia Freedom of Information Act and any guidance from the Office of the Attorney General. With the exception of the information listed in the next section, no employee information shall be released to a third party without the written consent of the subject employee.
- b. Following disclosure of the following information to a third party, the Human Resource Section shall notify the subject employee of the release of information including the name and address of the individual requesting the information.
  - 1) Employee's position

- 2) Employee's job classification
- 3) Dates of employment
- 4) Annual salary, official salary or rate of pay if such pay exceeds \$10,000 per year

15. Property Registration Files

Direct record requests to: Property Registration Office of the Common Interest Community Section

Property registration files are available in electronic format for public disclosure.

16. Recovery Fund Files

Direct record requests to: Custodian of Record

Copies of Contractor and Real Estate Recovery Fund claim files are available upon request, regardless of case status.

17. Regulant Lists

Direct record requests to: Information Management (formerly Public Records) Section

Statewide regulant lists for specific boards and occupations are available electronically for distribution on CD, DVD or e-mail.

D. OTHER DISCLOSABLE INFORMATION

While the Virginia Freedom of Information Act addresses the disclosure of "records", other "information" shall be available to the public in order to afford them with the consumer protection associated with using appropriately credentialed practitioners. The appropriate licensing section is responsible for responding to general inquiries regarding licenses and licensing requirements. The licensing, certification and registration information listed below may be released to the public via telephone, facsimile, e-mail or any other form of communication agreed to by both the requester and the Department.

1. Last 4 digits only of a licensee's social security number or Virginia DMV Control Number
2. License number
3. Date of initial licensure
4. Expiration date of license
5. License classification
6. Method of obtaining license (e.g., exam, reciprocity, comity)
7. License classification
8. License status
9. Address of record (alternate addresses of individual regulants may be disclosed if the physical address required at the time of licensure has been replaced in order to protect regulant privacy)
10. Identity of individuals required as a condition of business licensure (e.g., qualified individuals, designated employees, brokers, compliance agents, responsible management) and the company with which they are affiliated.
11. Bond information

E. OTHER NON-DISCLOSABLE INFORMATION

1. 9 character social security numbers or Virginia DMV control numbers (at the Executive Director's discretion, social security numbers/DMV control numbers may be disclosed on Certifications of Regulant Status)
2. Bank routing and account numbers
3. Credit/debit card numbers
4. E-mail addresses

5. Examination scores, pass/fail status or number of times an examination was taken by a candidate/licensee unless a board policy to the contrary exists
6. State income, business and estate tax returns and personal property tax returns are exempt from public disclosure.
7. Any information that may compromise the privacy or safety of an individual or business (i.e., medical/mental records, scholastic records, etc.) may be disclosed only upon approval of the Director, Chief Deputy Director, Deputy Directors or Information Management Director.

F. PROCEDURE FOR CORRECTING PERSONAL INFORMATION

Pursuant to §2.2-3806.A.5 of the *Code of Virginia*, in the event that a regulant determines that the Department's information on that person is inaccurate, obsolete or irrelevant, the individual should submit a written request for correction, removal or amendment to the Information Management Section. The Information Management Director shall be responsible for reviewing the request, determining if corrective action is warranted and coordinating any corrective action and written response to the requester.