VIRGINIA DEPARTMENT OF HEALTH

VDH Guidance Document
OIM-501

Subject: Responding to FOIA Requests

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1. Purpose: This document provides guidance for monitoring and responding to Virginia Freedom of Information Act (FOIA) requests. This document also outlines the conditions under which VDH is to assess monetary charges for responding to FOIA requests submitted by individuals and organizations, and establishes policy and procedures pursuant to which such charges shall be identified and by what methods they are to be calculated.

2. Background: The Virginia Freedom of Information Advisory Council has issued statewide guidance with regard to determining allowable charges for record production under FOIA. This policy supplements the statewide guidelines, which are posted on the VDH website, and specifies procedures for determining and documenting allowable charges within VDH. This policy also supplements information contained in the document titled "Rights and Responsibilities: The Rights of Requesters and Responsibilities of the Virginia Department of Health under the Virginia Freedom of Information Act", posted on the VDH website.

3. Policy: VDH will respond to FOIA requests by providing all non-exempt information in a timely manner, while at the same time recovering its reasonable costs to respond as authorized by the *Code of Virginia*. This policy also applies to requests made pursuant to an employee grievance procedure.

   The Executive Advisor to the State Health Commissioner is the VDH FOIA Coordinator, and is responsible for ensuring the effective implementation of this policy and for providing necessary oversight.

   Each work unit will develop and implement a tracking system which will maintain a record of all FOIA requests received, responses provided, and charges assessed. At a minimum, that record shall include the following information for each separate request:

   - Name of requester,
   - Requested documents,
   - Date request received by VDH,
   - Date response sent to the requester,
   - Amount of charges assessed,
   - Amount of payment received, and
   - Requests for which more than $50 in charges were waived.

Each work unit will appoint a FOIA Officer who will be responsible for ensuring that the FOIA request tracking system is implemented and maintained, and that charges for responding to FOIA requests are assessed in accordance with the procedures contained in this document.

VDH will assess reasonable charges, not to exceed its actual cost, incurred in accessing, duplicating, shipping, mailing, supplying, or searching for requested records, including records maintained in electronic format; and for reformatting electronic information into a format mutually agreed upon by VDH and the requester. In determining its reasonable, allowable charges, VDH will utilize a standard methodology in a consistent manner.

VDH is not prohibited from assessing a charge to cover its reasonable costs incurred in searching for documents responsive to a FOIA request, even if VDH subsequently determines that it has no documents that are responsive to the request.

4. Definitions:

   Work Unit - Either a Central Office division, an Office of Drinking Water Field Office, an Office of the Chief Medical Examiner Regional Office, a Local Health District, or one of the following offices: Office of Health Policy and Planning, Office of Information Management, Office of the Internal Auditor, Office of Licensure and Certification, or Office of the Commissioner.

5. Procedures for Determining Charges:

   a. VDH shall include the cost of staff time spent responding to the request in its assessment of reasonable charges. The cost of staff time shall be calculated using the hourly rate(s) of the person(s), including temporary employees, responding to the request. The hourly rate may cover salary, but shall not cover benefits such as health and life insurance, leave, social security, workers' compensation, and retirement.

   b. VDH shall not include "overhead" charges such as rent, utilities, and equipment in its calculation of reasonable charges.

   c. Each VDH work unit maintains the discretion to waive some or all of its reasonable costs incurred in responding to a request. However, the work unit's decision to not charge for responding to a particular request shall not prohibit the work unit from charging for responding to future requests from the same individual or organization, including requests similar to those previously received for which the work unit did not assess a charge. Each work unit shall maintain a record of all waivers granted in excess of $50.

   d. VDH Office, Division, and/or District Directors will ensure that appropriate staff is utilized efficiently and effectively in responding to FOIA requests.

e. On an as-needed basis, VDH Office, Division, and District Directors, and/or their designees, will determine the hourly rate from payroll records for staff that are responsible for responding to FOIA requests. The hourly rate may cover salary but shall not cover benefits such as health and life insurance, leave, social security, workers' compensation, and retirement. The VDH Office of Human Resources and the Office of Financial Management - Budget Services will provide technical assistance upon request.

f. VDH shall base its determination of actual per page copying costs on the average annual copy machine maintenance, toner, and paper expenses. This will vary by work unit and each work unit should maintain on file the documentation of how this cost is computed.

g. Upon receipt of a FOIA request, the VDH Office, Division, and/or District Director shall make a determination if the work activities required to respond to the FOIA is likely to incur costs greater than $200.

h. In any case where VDH determines in advance that reasonable charges for responding to a request are likely to exceed $200, VDH should, before continuing to process the request, notify the requester of the estimated charges. The amount of time that elapses between the notice of the estimated charge and the response of the requester shall not count towards the period of time within which VDH is required by law to respond to the request.

i. In any case where VDH determines in advance that reasonable charges for responding to a request are likely to exceed $200, VDH shall require payment of a deposit not to exceed the amount of the estimated charge. This notice is intended to give the requester an opportunity to either agree to payment of the deposit, rescind the request, or modify the request in an attempt to reduce the estimated charge. VDH shall also notify the requester that, if actual costs are greater than the initial estimate, an additional charge will be assessed at the time the records are produced. Likewise, VDH shall notify the requester that if actual costs are lower than the estimate, a refund will be issued. VDH is not required to perform any additional work to respond to a request until the deposit is received.

j. Upon receipt, the deposit shall be credited toward the final cost of supplying the requested records. These funds shall be deposited as revenue with the appropriate fund code using the revenue source 02260 (Administrative Fees).

k. In cases where the estimated cost of producing the requested records is less than $200, VDH should produce the requested records and include a bill for the charges. VDH Office, Division, and District staff shall pursue collection of the amounts due pursuant to VDH's Accounts Receivable Policies and Procedures as stated in the agency's Department Administrative Management Manual.

l. In any case where VDH is owed money from the requester in connection with a previous FOIA request that has remained unpaid for more than 30 days, VDH may require payment of the post-due amount prior to responding to a new FOIA request.

m. VDH Office, Division, and/or District Directors will ensure that appropriate and sufficient documentation is maintained concerning the amount of staff time spent and the actual costs incurred in responding to FOIA requests, such that the amount of charges assessed can be verified and analyzed.

6. Effective Date: This issuance is effective on July 1, 2006.

Approved: _____ _____ ____June 2, 2006 __

Robert B. Stroube, M.D., M.P.H. Date

State Health Commissioner