

Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of the Department of Mines, Minerals and Energy Under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et. seq. of the Code of Virginia, 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 policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- You have the right to request to inspect or receive copies of public records, or both.
- 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 district or circuit court to compel compliance with FOIA.

Making a Request for records from the Department of Mines, Minerals and Energy

- 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.
 - From a practical perspective, it may be helpful to both you and our agency to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. DMME has a form for this purpose (Request for Information Under FOIA – DMME-IR-1), which can be accessed at the bottom of this page.

However, we 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 we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to a situation where you are asking general questions about the work of the Department of Mines, Minerals and Energy (DMME), nor does it require DMME to create a record that does not exist.
- You may choose to receive electronic records in any format used by DMME 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 we have questions about your request, please cooperate with our 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. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from the Department of Mines, Minerals and Energy (DMME), you may direct your request to Tarah Kesterson. She can be reached at: P.O. Drawer 900, Big Stone Gap, VA • Phone: (276) 523-8146 • FAX: (276) 523-8148 • E-mail: Tarah.Kesterson@dmme.virginia.gov. You may also contact her with questions you have concerning requesting records from DMME. 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 foiacouncil@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Department of Mines, Minerals and Energy's Responsibilities in Responding to Your Request

- The Department of Mines, Minerals and Energy (DMME) must respond to your request within five 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 DMME is irrelevant, and you are not required to tell us why you want the records before we respond to your request. FOIA does, however, allow DMME to ask you to provide your name and legal address.
- FOIA requires that DMME make one of the following responses to your request within the five-day time period:
 - 1) We provide you with the records that you have requested in their entirety.
 - 2) We 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, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
 - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
 - 4) If it is practically impossible for DMME to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Costs

- You may have to pay for the records that you request from DMME. FOIA allows us 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 we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we 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.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, DMME may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. DMME commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- No person shall give advance notice of mine inspections without authorization of the director. Any information obtained in connection with an inspection that reveals a trade secret is not to be disclosed. (Code of Virginia 45.1-161.84)
- The department should not disclose the identity of any person who reports an alleged health or safety violation. (Code of Virginia 45.1-161.97)
- Information submitted as part of an application for a DMLR coal exploration permit that the applicant states contain trade secrets or privileged commercial or financial data related to competitive rights. (Code of Virginia 45.1-233)
- Logs, surveys, and reports filed in connection with exploration for uranium shall be kept confidential for two years. Upon request from the permitted operator,

these files shall be kept confidential for an additional two years. (Code of Virginia 45.1-285)

- Logs, surveys, and reports filed in connection with drilling, completion, and testing of a development well for gas and oil shall be kept confidential for 90 days after completion of the well, or 18 months after the total well depth is reached, whichever occurs first. Upon request from the permitted operator, records filed in connection with an exploratory well or corehole shall be kept confidential for two years after completion or four years after total well depth is reached whichever occurs first. The gas and oil inspector may grant requests to extend the period farther for exploratory wells. However, for wells drilled through coal seams, coal owners may request surveys and logs down to the lowest known coal seam. (Code of Virginia 45.1-361.6)
- All proprietary information and statistics used in geologic research by DMR shall be kept confidential unless the owner of the information consents to its release. (Code of Virginia 45.1-385)
- Cost estimates related to a proposed procurement transaction prepared by or for a public body. (Code of Virginia 2.2-4342)
- Financial-disclosure statements submitted by agency employees to comply with the prohibition against conflicts of interest with regulated coal mining operations. (Code of Virginia 45.1-231)
- Vendor proprietary information regarding computer software. (U.S. Copyright Law)
- The Department of State Internal Auditor will release any hotline complaint investigation data. (Code of Virginia 2.2-3705:43)
- Annual reports submitted to DMME under the Mineral Mine Safety Act regarding tonnage, hours worked and mining methods. (Code of Virginia 45.1-161.292:35.C)

There are general exemptions under Section 2.2-3705 of the Virginia Freedom of Information Act, including the following:

- Memoranda, correspondence, evidence, and complaints related to criminal investigations, including internal administrative investigations that could lead to criminal charges.
- Any writing protected by attorney-client privilege.
- Memoranda, working papers, and records compiled specifically for use in litigation.

- Security manuals and other materials containing information vital to agency security, including security of computer systems and telephone systems.
- Memoranda, legal opinions, working papers and records recorded or compiled exclusively for a closed session of an appointed board.
- Computer software developed by a state agency. And vendor proprietary information software which may be in the official records of a public body.
- Appraisals and cost estimates of property being considered in pending sales or leases.
- Information furnished to the State Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Internal Auditor on pending investigations.
- Personnel records containing information concerning identifiable individuals unless the person that is the subject of the personnel records waives, in writing, this protection.
- Tests and examinations prepared or used to evaluate the qualifications of an applicant for a certificate, license, employment, retention, or promotion.
- Investigative notes and other correspondence and information furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training.
- Working papers, and correspondence prepared for or by the Office of the Governor, Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education.
- Proprietary records submitted by private energy suppliers to DMME which are used for contingency planning or for compiling statistical information on suppliers.