


# COMMONWEALTH OF VIRGINIA

## Department of Environmental Quality

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**To:** DEQ Staff  
**From:** Michael S. Rolband, PE, PWD, PWS Emeritus   
**Copies:** DEQ Staff  
**Date:** August 8, 2024  
**Subject:** Manual for Processing Information Requests Pursuant to the Virginia Freedom of Information Act

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### Summary:

Virginia Code § 2.2-3700 through 2.2-3715 requires all state agencies to provide the public access to public records. The last agency policy regarding the Virginia Freedom of Information Act was dated October 11, 2022; this guidance will replace that guidance document. The guidance describes the process and procedure for the agency to respond to public record requests.

### Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>).
- The Department's website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

### Contact Information:

Please contact Natalie Womack at [natalie.womack@deq.virginia.gov](mailto:natalie.womack@deq.virginia.gov) with any questions regarding the application of this guidance.

### Certification:

As required by Subsection B of § 2.2-4002.1 of the Administrative Process Act, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

### Disclaimer:

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular**

**action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**



The Commonwealth of Virginia  
Department of Environmental Quality

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Manual for Processing Information  
Requests Pursuant to the Virginia Freedom  
of Information Act

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August 2024

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## DEQ Roles and Responsibilities

**Central Office FOIA Coordinator:** Receives and oversees the processing of information requests submitted to DEQ's Central Office, tracks all received information requests to ensure compliance with FOIA, maintains a file of the information requests received and responded to, and notifies the FOIA Officer of any failure to adhere to FOIA. With the FOIA Officer coordinates responses for multi-regional and multi-program requests to ensure compliance with FOIA.

**Custodians:** Each director of a DEQ division or regional office is the custodian for the records in the physical possession of his or her division, region or office.

**Custodian of records:** Each employee is deemed the custodian of records, both paper and electronic, in his or her possession. A custodian should not disclose or withhold records subject to discretionary disclosure prior to consultation with the DEQ FOIA Officer.

**Regional FOIA coordinator/ alternate FOIA coordinator:** Each division director and regional manager shall designate a coordinator and alternate coordinator for each DEQ office. The FOIA office coordinator shall perform the following functions:

- Receive and oversee the processing of information requests that are appropriate for their respective division, office or region.
- Track all received information requests to ensure compliance with FOIA.
- Maintain a file of the information requests that they received and responded to, including the tracking system.<sup>1</sup>
- Notify the FOIA Officer of any failure to adhere to FOIA.

**FOIA Officer:** The DEQ FOIA Officer is designated by the Director. DEQ's FOIA Officer performs the following functions:

- Update the FOIA policy as necessary in accordance with changes made by the Virginia General Assembly to FOIA or agency directive;
- Maintain a complete written record of DEQ's custodians, coordinators and alternate coordinators for FOIA purposes;
- Maintain the official version of this Guidance at the [Virginia Regulatory Town Hall](#) website, provide copies of DEQ's FOIA policy to all appropriate state boards and DEQ custodians as necessary;
- Report to the Director instances of untimely responses, unauthorized denial of access, or other violations of law or FOIA or this Guidance;
- Consult with the Director and, when necessary, the Department of Law Office of Attorney General ("OAG") OAG to ascertain the appropriate course of action when the custodian deems all or a part of a requested set of records to be subject to discretionary withholding; and
- Consult with staff and/or conduct reviews of potentially exempt records before asserting an exemption for releasing a record.
- Coordinates and drafts communication to requesters regarding exempt records.

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<sup>1</sup> [Library of Virginia Retention and Disposition Schedule General Schedule No. GS-101 Series 012029](#). Records regarding information requests and responses should be retained for three (3) years after the last action.

## Introduction

The Virginia Freedom of Information Act (“FOIA”) provides a legal framework that promotes access to agency information, and improves transparency and accountability for agency operations and decisions. DEQ’s Freedom of Information Act Policy and Procedure Manual (“Guidance”<sup>2</sup>) establishes a transparent, efficient and consistently applied process to respond to public record requests pursuant to FOIA. Va. Code [§ 2.2-3700](#). The purpose of the Guidance is to provide the public and DEQ employees with instruction concerning the manner in which DEQ implements FOIA. The Guidance clarifies the requirements for a valid records request, permissible agency responses, as well as detailed procedures for DEQ staff to reference when reviewing, redacting, and releasing agency records pursuant to FOIA.

In the event the Virginia General Assembly amends FOIA, rendering any provision of this Guidance inconsistent with the amended law, this Guidance shall be interpreted in accordance with the amended law. The responsibility for interpreting the provisions of this Guidance is assigned to the DEQ FOIA Officer in consultation with the Director of DEQ (“Director”). Additionally, when records are requested from DEQ pursuant to a court order or subpoena, the Rules of the Supreme Court of Virginia shall apply. Va. Code [§ 2.2-3703.1](#).

## Who can use FOIA?

FOIA provides the right to inspect and copy public records to the following individuals:

1. Citizens of the Commonwealth of Virginia;
2. Representatives of newspapers and magazines with circulation in Virginia; and
3. Representatives of radio and television stations broadcasting in or into Virginia. See, Va. Code [§ 2.2-3704 \(A\)](#).

DEQ FOIA staff begin with a presumption that public records are releasable under FOIA unless there is a specific exclusion that applies. Va. Code [§2.2-3705.1](#). (*See Appendix A: Tip #1*)

## How are records provided?

Once a request has been received and responsive public records have been identified and located, the agency will provide the requester the option to have the record(s):

- 1) Delivered via postal mail
- 2) Delivered via electronic means or
- 3) Reviewed in-person by extending an opportunity to visit the appropriate DEQ office. Va. Code [§ 2.2-3704 \(A\)](#).

If the requester elects to receive the records via postal mail or electronic means the agency will provide public records to the requester in the format in which they exist at DEQ, such as

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<sup>2</sup> Guidance documents do not establish or affect legal rights or obligations, do not establish a binding norm, and are not determinative of the issues addressed. Decisions in individual cases will be made by applying the laws, regulations, and policies of the Commonwealth to case-specific facts.

Microsoft Word, Microsoft Excel, Portable Document Format (PDF), etc. If the requester elects to visit a DEQ office, the requester must make an appointment with the FOIA coordinator for that office. If the requester wishes to inspect the original records, he/she may do so during the normal regular state business hours.<sup>3</sup> The FOIA coordinator and requester should establish and confirm a specific date, time, and location for the scheduled visit. The FOIA coordinator should take precautions, as necessary, for the preservation and safekeeping of agency records to prevent damage or destruction while the records are being inspected. Such safeguards may include monitoring the requester during the records inspection. If the requester wishes to have copies made of any of the inspected records, the FOIA coordinator should make all reasonable efforts to provide the requester copies at the time of the scheduled visit unless the FOIA coordinator determines that the production of such records at the time of the visit cannot be reasonably accomplished or is overly burdensome. If the FOIA coordinator is unable to produce copies at the time of the scheduled visit, the FOIA coordinator will make arrangements with the requester to provide copies of the records within a reasonable time.<sup>4</sup>

### What information are requesters entitled to under FOIA?

FOIA provides that all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Va. Code [§ 2.2-3704 \(A\)](#).

A public record is defined as all writings or recordings consisting of the following elements:

1. letters, numbers, and words, or their equivalent;
2. in any form<sup>5</sup>
3. prepared by or in the possession of DEQ or its employees in the transaction of public business. Va. Code [§ 2.2-3701](#).

There are two important limitations to the identification and production of DEQ public records. First, an agency is not required to create a new record if one does not already exist. Va. Code [§ 2.2-3704\(D\)](#). Second, the agency may withhold the release of certain records in accordance with the exclusions provided in FOIA or other areas of the law that govern the release of such records.

### Procedure

#### Requirements for Making a Request

There are **two steps** for submitting an information request:

##### Step 1:

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<sup>3</sup> Normal state hours are from 8:30-4:30. [Department Of Human Resource Management Policy No.: 1.25 Policies and Procedures Manual](#)

<sup>4</sup> For more information see pg. 13 Production.

<sup>5</sup> Including databases such as CEDS (Comprehensive Environmental Data Systems)

The best and preferred practice for submitting a FOIA request is to complete and submit a request through DEQ's FOIA website. A FOIA request can also be made orally or in writing (e.g. electronic submission via email or letter submission via postal mail) to a DEQ FOIA Coordinator. Additionally, FOIA law does not require an individual to explicitly reference FOIA for a communication to be deemed a request under FOIA. Va Code § [2.2-3704 \(A\)](#).

## **Step 2:**

If the request has been submitted to the agency and the information requested is clearly stated, then the agency will deem the request complete. Va. Code [2.2-3704 \(B\)](#). Prior to conducting a search, staff will contact the requester, in writing, to notify the requester in writing that DEQ may make reasonable charges not to exceed the actual cost incurred in accessing, duplicating, supplying and searching for the requested records to ask the requester whether the requester would like to request a cost estimate in advance of DEQ supplying the requested records. Va. Code [2.2-3704\(F\)](#). The agency will respond to the requester within the statutory period of five business days. However, if for any reason the request is not deemed complete, the agency will notify the requester for clarification. Until the requester contacts the agency for clarification, the statutory time will be paused. If the requester fails to contact the agency within a reasonable time, the request will be closed without any records being released. If a request has been closed as a result of the requester's failure to contact the agency to provide clarification, the requester must resubmit the request with sufficient specificity for agency staff to identify responsive records.

## **Agency's Procedure for Responding to a Request**

If a requester has directly communicated his/her request to a DEQ employee and the requested information can be identified and located with reasonable specificity, then the agency will respond to the requester within five working days. The agency's failure to respond to a request within the specified time period is deemed a denial of the request. Va. Code § [2.2-3704 \(E\)](#). The majority of requests to DEQ are responded to within five days; however, some responses may require additional time because records have to be reviewed for potential exemptions or the agency may experience some difficulty in gathering the records depending on the volume of the responsive records or number of individuals who may have responsive records.

FOIA requires one of the following options be exercised when responding to a request:

1. Record(s) Released in Full
  - a. The agency provides all responsive records to the requester in full.
2. Record(s) Entirely Withheld
  - a. The agency is withholding the record(s). The agency must provide a general description of the information withheld, such as the volume and subject of the records. The agency also will provide the requester with the specific Code section that authorizes the agency to withholding the record(s). Va. Code [§ 2.2-3704 \(B\) \(1\)](#).
3. Record(s) Withheld in-part and Released in-part
  - a. The agency provides the requester notification that the entire record(s) or a portion of the record(s) has been withheld. Accompanying the notification, the agency also will provide the specific code section authorizing the agency to withhold the record(s). The agency also will provide a general description of



the information withheld that includes the quantity and subject matter of the records that were withheld. Va. Code [§ 2.2-3704 \(B\) \(2\)](#).

4. No Records
  - a. The agency will provide notification to the requester that the requested records could not be found or do not exist.
5. Additional Time Needed
  - a. The agency may require additional time in order to provide the requested records or determine whether they are available beyond the statutory five day period. In the event that this occurs, the agency will specify the condition causing the need to respond after the five day period and notify the requester that an additional seven working days will be needed to fulfill the request. *(See Appendix A: Tip #2)*

## Practical Application

There are two types of disclosures, mandatory and discretionary. All DEQ records are subject to mandatory disclosure unless they are excluded or prohibited. **Records excluded, but not prohibited, from the mandatory release may qualify for discretionary disclosure after consulting with the DEQ FOIA Officer.**

## Exclusions of General Application

### *Personnel Information*

Personnel information concerns employment related information associated with identifiable individuals. Personnel information is excluded from mandatory disclosure. The agency has the discretion to release or exclude such information unless the disclosure is prohibited by law. The agency's policy is to exclude the release of such information.

However, the agency will release the following information:

1. an information request submitted by the subject of the record;
2. an information request is submitted by a third party, when the subject of the record is 18 years of age or older and waives the rights afforded to him or her under [Va. Code § 2.2-3705.1](#);
3. associated with contracts between a public body and its officers or employees other than contracts settling public employment disputes held confidential as personnel records under [Va. Code § 2.2-3705.1](#);
4. of the name, position, job classification, official salary, or rate of pay of, allowances or reimbursements for expenses paid to, any officer, official, or employee of public body whose annual rate of pay is \$10,000 or less or
5. compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees whose annual rate of pay is more than \$10,000. Va. Code [§2.2-3705.1 \(1\)](#).

### *Attorney - Client Privilege and Attorney Work Product*

The agency withholds any advice of legal counsel that is protected under the attorney-client privilege. Va. Code [§ 2.2-3705.1 \(2\)](#). Similarly, legal memoranda and other work product 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 Va. Code [§ 2.2-3711](#) will be withheld. Va. Code [§ 2.2-3705.1 \(3\)](#).

### *Tests*

The agency withholds tests and other examinations used, administered or prepared by DEQ to evaluate an employee or employment seekers qualifications or aptitude for employment, retention or promotion or qualifications for any license or certificate issued by DEQ. Va. Code [§ 2.2-3705.1\(4\)](#).

### *Closed Meetings*

The agency withholds records compiled exclusively for use in closed meetings lawfully held pursuant to [Va. Code § 2.2-3711](#). Va. Code [§ 2.2-3705.1 \(5\)](#).

### *Proprietary Information*

The agency withholds vendor proprietary information software contained in DEQ records. Vendor proprietary information software includes computer programs that are acquired from a vendor for purposes of processing data for DEQ. Va. Code [§ 2.2-3705.1 \(6\)](#).

### *Software*

The agency withholds computer software developed by or for a state agency. Va. Code [§ 2.2-3705.1 \(7\)](#).

### *Real Property Transactions*

The agency withholds appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such transaction. Va. Code [§ 2.2-3705.1 \(8\)](#).

### *Non-disclosure of Personal Contact Information for the Purpose of Obtaining Electronic Mail*

The agency withholds individual personal contact information if the individual has provided his or her personal contact information for the sole purpose of receiving electronic mail from the agency. Personal contact information is defined as an individual's home and/or business physical address, email address, telephone number and/or comparable number assigned to an electronic device. Va. Code [§ 2.2-3705.1 \(10\)](#).

### *Financial Information*

The agency withholds account numbers, routing numbers, credit card numbers, debit card numbers or other account information with a financial institution unless the individual requesting the information is also the subject of the information. Va. Code [§ 2.2-3705.1 \(13\)](#).

### **Exclusions related to public safety<sup>6</sup>**

#### *Public Safety*

The following information contained in a public record is excluded from the mandatory disclosure provision of FOIA, but the information may be disclosed at the discretion of the

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<sup>6</sup> Please be advised that there are additional circumstances under the public safety exemption that may allow for information and/or records to be withheld.

custodian of the record, except where such disclosure is prohibited by law in accordance with Va. Code [§2.2-3704.01](#). Va. Code [§2.2-3705.2 \(14\)](#).

## Exclusions related to administrative investigations

### *Administrative investigations*

Active investigation: The agency will withhold investigator notes, correspondence, information, and records furnished in confidence regarding an active investigation by the following authorities and/or pursuant to the following statutes:

1. Employment discrimination complaints made to the Department of Human Resources Management,
2. The Virginia Human Rights Act,
3. The Auditor of Public Accounts,
4. The Joint Legislative Audit and Review Commission,
5. Fraud and Abuse Whistle Blower Protection Act,
6. The Office of State Inspector General for investigations initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Va. Code [§2.2-307](#) et seq.,
7. Internal auditor(s) appointed by the head of a state agency. Va. Code [§2.2-3705.3 \(5\)](#).

Closed investigations: If an investigation has been completed, the agency will release public records in its possession including investigator notes, correspondence, and other information. However, the identity of the complainants, and/or persons supplying information regarding items 1-7 to investigators must not be revealed.

## Exclusions related proprietary records and trade secrets

Trade secrets are defined as follows:

- information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:
- derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, **and**
- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Va. Code [§59.1-336](#).

The agency has identified three steps that should be taken in order for an exclusion to be asserted for trade secrets and proprietary information.

- The submitting entity must invoke the trade secret exclusion upon submission of the data or other materials for which protection from disclosure is sought
- The submitting entity must identify the data or other materials for which protection is sought, and
- The submitting entity must state the reasons why protection is necessary. Va. Code [§2.2-3705.6 \(26\)](#).

Once the records in DEQ possession have been designated as qualifying for the trade secret or proprietary information exclusion, the following records will be withheld from release: Va. Code [§2.2-3705.6](#).

1. Financial statements not publicly available that are filed with applications for industrial development financing in accordance with [Industrial Development and Revenue Bond Act](#). Va. Code [§15.2-4900](#).
2. Information that was filed as confidential under the [Toxic Substances Information Act](#). Va. Code [§32.1-239](#).
3. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth regarding Resource Management Plans pursuant to Va. Code [§§10.1-104.7](#), [10.1-104.8](#) or [10.1-104.9](#) other than required as part of a state or federal regulatory enforcement action. Va. Code [§2.2-3705.6 \(25\)](#).
4. Trade secret information provided in plans, specifications, and information DEQ requires to be submitted because DEQ has reason to believe that the individual is generating, storing, transporting, disposing of, or treating waste if the submitting party has identified the information claimed as trade secret at the time of submission to the agency. However, DEQ will release plans, specifications and information to the appropriate officials of the Environmental Protection Agency pursuant to the requirements of the federal Solid Waste Disposal Act or otherwise required by law. Va. Code [§10.1-1458](#).
5. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services or sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business. Va. Code [§2.2-3705.6 \(29\)](#).
6. Trade secret information provided in plans specifications, and information to the Board upon request if the Board in its discharge of duties has reason to believe that the facility is causing or may be about to cause, an air pollution problem. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production will not be released unless for purposes of enforcement of Va. Code [§ 10.1-1314.1](#) or the federal Clean Air Act or regulations and orders of the board. Va. Code [§§10.1-1314](#); [10.1-1314.1](#).
7. Trade secret information provided in plans, specifications, and other pertinent information, such as secret formulae, secret processes, or secret methods other than effluent data used by an owner or under the owner's discretion provided to determine the effect of the wastes from his discharge on the quality of state waters will not be released unless disclosure is necessary to an appropriate official of the Environmental Protection Agency pursuant to the requirements of the Federal Water Pollution Act Amendments of 1972. Va. Code [§62.1-44.21](#). (*See Appendix A: Tip #3*)

## Exclusions related working papers and correspondence (executive privilege)

"Working papers" are defined as those records that are prepared by or for a public official for his or her personal or deliberative use. If a state employee has created records for or on behalf of the following entities listed below, please contact the FOIA Officer. Va. Code [§2.2-3705.7 \(2\)](#).

1. Office of the Governor
2. Lieutenant Governor
3. The Attorney General
4. The members of the General Assembly
5. The Division of Legislative Services
6. The mayor or other chief executive officer of any political subdivision of the Commonwealth
7. The president or other chief executive officer of any public institution of higher education in Virginia. (*See Appendix A: Tip #4*)

## Agency specific exclusions

### Hazardous waste facilities

The agency will withhold records regarding the siting of hazardous waste<sup>7</sup> facilities if disclosure would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement. Va. Code [§2. 2-3705.7\(9\)](#).

The agency will release records related to the application for certification of site approval in accordance with Virginia law. Va. Code [§10.1-1441](#).

### Site-Specific Location

The agency will withhold records containing information on the site specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archeological sites if disclosure would jeopardize the resource.

If the owner of the land upon which the resource is located requests the information, then the agency will release the information. Va. Code [§2.2-3705.7 \(10\)](#).

## Enforcement

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<sup>7</sup> "Hazardous waste" means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Va. Code [§ 10.1-1400](#).

FOIA creates a temporary exclusion pursuant to Va. Code [§2.2-3705.7\(15\)](#) for DEQ records documenting “enforcement strategies<sup>8</sup>, including proposed sanctions for enforcement actions.” Such documents are excluded from disclosure under FOIA only until “a proposed sanction resulting from the investigation has been proposed to the director of the agency.”<sup>9</sup>

This exclusion does not apply to inspection reports, warning letters, notices of alleged violations, and documents detailing the nature of any environmental contamination that may have occurred.

The agency will withhold records of DEQ, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board related to the following types of investigations:

- **Enforcement strategies, including proposed sanctions for enforcement actions**

After the investigation has concluded and a sanction has been proposed to the Director, DEQ enforcement strategy documents will be disclosed pursuant to FOIA unless another FOIA exclusion applies.

- **Active federal environmental enforcement actions that are considered confidential under federal law**

Federal documents pertaining to a federal enforcement action and in the possession of DEQ are not subject to disclosure under FOIA if:

1. the enforcement action is active (*i.e.*, ongoing), and
2. the documents are considered confidential under federal law.

Whether the documents are considered confidential under federal law is based upon the designation as such by the federal agency or its counsel providing the documents. State records that are otherwise subject to disclosure under FOIA do not become exempt by virtue of their use or potential use in a federal action.

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<sup>8</sup> “Enforcement strategy documents” include enforcement recommendation and plan documents (“ERPs”); memoranda, emails and other documents dedicated to the discussion of appropriate enforcement strategy and its progress; documents and proposals drafted and/or received in the course of enforcement action settlement negotiations and pertaining directly thereto; draft orders, including draft findings of fact and conclusions of law; civil charge or civil penalty worksheets and documents prepared as part of the active prosecution of adversarial administrative and judicial enforcement actions.

<sup>9</sup> A sanction “proposed to the director of the agency” For consent orders that are subject to public comment, a sanction has been “proposed to the Director” at the presentation of a consent order for final approval and proposed execution by the DEQ Director.

For consent orders and consent special orders that are subject to public comment, a sanction has been “proposed to the Director” when the Director or his designee approves the order for public comment.

For proposed administrative orders resulting from an adversarial administrative proceeding such as a formal hearing or informal fact-finding, a sanction would be “proposed to the director” at the presentation for final approval and proposed execution of the order by the Director or his designee, following any review requested by the Director or his designee.

## Required Withholding of Records

Virginia laws may identify specific records that must be withheld from disclosure. The following laws include such requirements with respect to records that DEQ may possess.

### Private Identification Numbers

If an individual has submitted the following information to the agency for the purpose of paying fees, fines, taxes or other charges collected by DEQ, Virginia law prohibits the agency from disclosing:

1. Social security numbers
2. Identification numbers on driver's license
3. Credit and debit card numbers
4. Bank accounts
5. Electronic and billing systems

The agency may release the private identification numbers if the private identification numbers are:

1. Necessary to conduct or complete the transaction for which the information was submitted; or
2. Required to be disclosed by other law or court order. Va. Code [§ 2.2-3808.1](#).

### *Communications and Materials pursuant to the Virginia Administrative Dispute Resolution Act*

The agency will withhold communications and material required to be kept confidential in accordance with the Virginia Administrative Dispute Resolution Act. Va. Code [§ 2.2-4119](#) of the Virginia Administrative Dispute Resolution Act ([§ 2.2-4115](#) et seq.).

### *Negotiation and awards of contract and transactions under The Virginia Public Procurement Act*

The agency will withhold records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the agency.

The agency will release such records after it has made a decision to award or not to award the contract. FOIA does not apply to procurement transactions conducted pursuant to the Virginia Public Procurement Act; the release of records are governed by the Virginia Public

## Production

### Fees and Estimate of the Cost

Unless a FOIA request can be processed in less than 15 minutes, DEQ will charge reasonable fees for its actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. DEQ will not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with maintaining records or transacting the general business of the agency. Any duplicating fee charged by DEQ will not exceed the actual cost of



duplication. DEQ will make reasonable efforts to supply the requested records at the lowest possible cost.

Prior to conducting a search, if the requester has not already indicated in the request whether or not the requester would like a cost estimate, DEQ staff will contact the requester, in writing, to provide notification that DEQ may make reasonable charges not to exceed the actual cost incurred and to ask the requester if they would like a cost estimate in advance of DEQ supplying the requested records. Va. Code [§2.2-3704 \(F\)](#). If the requester requests an estimate DEQ will provide an estimate of the fees.

### **Outstanding Balance**

Prior to processing a request from a requester with a 30 day or more outstanding balance, the agency will require the requester to remit payment in full for any outstanding balance. Va. Code [§2.2-3704 \(I\)](#) (*See Appendix A: Tip #5*)

### **Calculation of Fees**

The agency assesses the cost of responding to a FOIA request in two ways: (1) Costs are assessed regarding the staff time DEQ employees provide in order to gather and produce the records requested (2) costs are assessed regarding any tangible records productions that are made through copies and other tangible forms of production.

### **Staff Time Costs**

**Staff time-** The agency bills staff time at two tiers: non-management and management. The hourly cost of staff time will be calculated by DEQ and posted on the DEQ FOIA website. The cost of staff time will be updated from time to time to reflect changes in cost.

### **Tangible Records Production Cost**

**Electronic records:** Electronic records productions are the preferred method of the agency. The agency will transmit the information through an electronic file share, e-mail or postal mail (CD). There is no associated cost with transmitting the records electronically outside of staff time outlined above. However, if the requester would prefer that the records to be placed on a CD and sent via postal mail, then any cost associated with this type of production will be borne by the requester and DEQ staff should include this cost.

**Photocopied or copied records:** If the requester does not wish to inspect the original records but wishes to be provided with copies of the requested records in physical paper form, the requester may elect to have copies made and sent to the requester. DEQ's basic charge for photocopying existing paper records will be posted on the DEQ FOIA website. When the request involves hundreds of pages, the staff may estimate the pages using the formula, 2 inches equals 500 pages (1 inch equals 250 pages, etc.), which is based on the standard size of a ream of paper. The cost associated with copying and mailing the records will be borne by the requester.

**Agency inability to copy requested records:** If the agency is unable to copy the records for requester, then the agency may fulfill its obligations by allowing the requester to contact a private copying service to produce the requested records. In such instances, steps must be taken to ensure that the integrity of the original records is retained. If a private copying



service is used, direct payment to the company is the responsibility of the requester and the cost per page will not be assessed by DEQ.

## DEQ Invoice

If the staff time associated with filling a FOIA request is over 15 minutes, then the requester will receive a FOIA invoice. The charges will show an itemization of the fees incurred for the production of the FOIA request. If the requester has questions or concerns, the requester should contact the individual that provided the invoice.

- **Less than 15 minutes of staff time and no tangible records production costs:** If the request is processed in less than 15 minutes of staff time and there are no tangible records production costs, then the FOIA coordinator shall release the requested records without any charges.
- **More than 15 minutes of staff time and/or there are tangible records production costs:** If the request requires more than 15 minutes of staff to process and/or there are tangible records production costs, the FOIA coordinator will provide the requester with an invoice of the charges related to the cost of FOIA productions.
- **\$ 200.00 or more:** If the cost of providing the records, staff time and/or tangible records production, is determined to likely exceed \$200.00, before the agency begins to process and/or continues to process the request, the FOIA coordinator will contact the FOIA Officer. The FOIA Officer will contact the requester to notify the requester that his or her FOIA request will be \$200 or more and payment will need to be received before the agency proceeds. Once the requester has been notified that receipt of payment is necessary to continue the FOIA process, the statutory period will be paused until the agency receives a deposit equal to the amount of the estimated cost to fulfill the request. If the cost of the production is more than the deposit, the deposit will be used as a credit and the remaining balance will be billed to the requester. Va. Code [§2.2-3704 \(H\)](#). Once the deposit has been received, the agency will resume processing the FOIA request within the remaining statutory period of time. *(See Appendix A: Tip #6)*
- **Instances when the requests asks for estimation of charges:** DEQ will provide the requester a cost estimate. The statutory time for providing the requested records will be tolled until the requester notifies the agency that he or she would like to have the request processed. If the agency does not receive a response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Va. Code [§2.2-3704 \(D\)](#).

## Submission of payment

Information about how to submit payment will be posted on DEQ's FOIA website. In instances where the estimated cost of providing records exceeds \$200, the Receipts Control office will notify the FOIA officer when the entire estimated payment has been received.

## Fee waivers

DEQ may grant fee waivers to other Virginia agencies; each request submitted by a Virginia agency will be reviewed on a case-by-case basis. DEQ will consider the nature of the

request, as well as the time expended by operational staff to fulfill the request to determine if fees will be assessed.

### **Penalties for violation**

Employees may be held personally liable for violations of FOIA. If a legal proceeding is commenced against any employee of DEQ for a violation of FOIA, and the court finds that a violation was **willfully and knowingly** made, the court shall impose upon such officer or employee of DEQ a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 or more than \$5,000. Va. Code [§2.2-3714](#). In an effort to ensure FOIA compliance, the agency will require employees to attend an annual training.

## Appendix A: Helpful Tips

**Tip # 1:** DEQ employees should be mindful of the agency's record retention practices and limitations on data storage. Please be sure to follow The Library of Virginia retention policy. [Retention Schedules](#).

**Tip #2:** The five day countdown begins the first working day after the request is received by the agency. If additional time is needed to respond to the requester, please contact your regional FOIA coordinator, the Central Office FOIA coordinator, and/or the FOIA Officer.

**Tip #3** If an individual contacts you regarding records that have been designated as qualifying for the trade secret or proprietary information exclusion, please contact the FOIA Officer. Each media has specific requirements for the submission of potentially proprietary or trade secreted information.

- [Air](#)→ [Memo Number 03-005. Guidance on Confidential Information and Responding to FOIA Requests for Air Permitting Records](#)
- [Land](#)→ [Land Protection & Revitalization Guidance Memo No. LPR-SW-2013-03](#)

**Tip #4:** As a DEQ employee, if a request is seeking records prepared by or for a public official for his or her personal or deliberative use be sure to contact the FOIA Officer. Again, always remember to check the caption of your email (To and From), as well as the individuals listed on the email chain.

**Tip #5:** If a requester with an outstanding balance submits a FOIA request, contact the FOIA Officer before fulfilling or denying the request.

**Tip #6:** If you determine that fulfilling the request will be overly burdensome, please be sure to contact your regional FOIA coordinator, the Central Office FOIA coordinator, and/or the FOIA Officer. The coordinators and/or the FOIA officer will come to an agreement with the requester regarding the date of the production of records and/or payment specifications.