

## **Rights & Responsibilities**

### **The Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), found at § 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. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Most of the information people request is already available online.

#### **Easiest Way to Get Information**

Over the past several years, the Department has posted **most** information that is available on the following web sites:

**Department of Health Professions**  
[www.dhp.virginia.gov](http://www.dhp.virginia.gov)

- Law
- Regulation
- Information about how to file a complaint
- Newsletters
- Policy (guidance documents)
- Recent case decisions
- Links to the sites below

### **License Look-up**

Link from [www.dhp.virginia.gov](http://www.dhp.virginia.gov) to:

[https://secure01.virginiainteractive.org/dhp/cgi-bin/search\\_publicdb.cgi](https://secure01.virginiainteractive.org/dhp/cgi-bin/search_publicdb.cgi)

- Look up current licensure information
- Access to purchase lists of licensees
- Link to any public information about notices and/or orders

### **Physician Profile**

Link from [www.dhp.virginia.gov](http://www.dhp.virginia.gov) to:

[www.vahealthprovider.com](http://www.vahealthprovider.com)

Extensive self-reported information about currently licensed doctors of medicine, osteopathic medicine, and podiatry, including:

- Practice location
- Hospital affiliations
- Education
- Residencies
- Board certifications
- Honors and awards
- Appointments and publications
- Proceedings, actions, and convictions
- Paid malpractice claims

### **Profiles for Oral and Maxillofacial Surgeons (Board of Dentistry)**

<http://www.dhp.virginia.gov/dentistry/profile/public/index.asp>

- Information similar to the Physician Profiles

### **Commonwealth Calendar**

[www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi](http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi)

Includes the following information about Board and Committee meetings:

- Name of Board or Committee
- Date and time
- Location
- Links to available agenda
- Links to minutes
- Staff contacts
- Accessibility information

**Regulatory Town Hall**  
<http://www.townhall.virginia.gov/>

Information on changes to regulations, including:

- Notices of intent to amend rules
- Rules proposed
- Newly adopted rules
- Public comment on proposed actions
- How to petition for a change in rules or comment on a petition

Information about meetings, agendas, and minutes

**Making a Request for records from the Department of Health Professions**

- You may request records by U.S. 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 the person receiving your request 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. However, we cannot refuse to respond to your FOIA request if you elect not to 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 Health Professions or a specific Board within the Department, nor does it require the Department or a Board to create a record that does not already exist.
- You may choose to receive electronic records in any format used by the Department 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 staff's 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, you may direct your request to the contact person. The FOIA officers can be reached at the Department address or e-mail listed in the next section. You may also contact the FOIA officer with questions you have concerning records requests from the Department or one of its boards/programs. 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 email at [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us), or by phone at (804) 225-3056 or toll free at 1-866-448-4100. Information about FOIA may be found at: <http://foiacouncil.dhs.virginia.gov/>**

The following individuals within the Department are designated as the FOIA officers and are responsible to respond to FOIA requests as noted below:

<u>FOIA Officer &amp; Contact email</u>	<u>Records</u>
<b>Board of Audiology &amp; Speech-Language Pathology</b> Leslie Knachel, Executive Director <a href="mailto:AudBD@dhp.virginia.gov">AudBD@dhp.virginia.gov</a>	All records associated with the Board of Audiology & Speech-Language Pathology
<b>Board of Counseling</b> Jaime Hoyle, Executive Director <a href="mailto:coun@dhp.virginia.gov">coun@dhp.virginia.gov</a>	All records associated with the Board of Counseling
<b>Board of Dentistry</b> Sandra Reen, Executive Director <a href="mailto:denbd@dhp.virginia.gov">denbd@dhp.virginia.gov</a>	All records associated with the Board of Dentistry
<b>Board of Funeral Directors and Embalmers</b> Corie Tillman-Wolf, Executive Director <a href="mailto:fanbd@dhp.virginia.gov">fanbd@dhp.virginia.gov</a>	All records associated with the Board of Funeral Directors and Embalmers
<b>Board of Health Professions</b> Elizabeth Carter, Executive Director <a href="mailto:bhp@dhp.virginia.gov">bhp@dhp.virginia.gov</a>	All records associated with the Board of Health Professions
<b>Board of Long Term Care Administrators</b> Corie Tillman-Wolf, Executive Director <a href="mailto:ltc@dhp.virginia.gov">ltc@dhp.virginia.gov</a>	All records associated with the Board of Long Term Care Administrators
<b>Board of Medicine</b> Jennifer Deschenes, Deputy Executive Director <a href="mailto:medbd@dhp.virginia.gov">medbd@dhp.virginia.gov</a>	All records associated with the Board of Medicine
<b>Board of Nursing</b> Jay Douglas, Executive Director <a href="mailto:nursebd@dhp.virginia.gov">nursebd@dhp.virginia.gov</a>	All records associated with the Board of Nursing
<b>Board of Optometry</b> Leslie Knachel, Executive Director <a href="mailto:optbd@dhp.virginia.gov">optbd@dhp.virginia.gov</a>	All records associated with the Board of Optometry
<b>Board of Pharmacy</b> Caroline Juran, Executive Director <a href="mailto:pharmbd@dhp.virginia.gov">pharmbd@dhp.virginia.gov</a>	All records associated with the Board of Pharmacy
<b>Board of Physical Therapy</b> Corie Tillman-Wolf, Executive Director <a href="mailto:ptboard@dhp.virginia.gov">ptboard@dhp.virginia.gov</a>	All records associated with the Board of Physical Therapy
<b>Board of Psychology</b> Jaime Hoyle, Executive Director	All records associated with the Board of Psychology

<a href="mailto:psy@dhp.virginia.gov">psy@dhp.virginia.gov</a>	
<b>Board of Social Work</b> Jaime Hoyle, Executive Director <a href="mailto:socialwork@dhp.virginia.gov">socialwork@dhp.virginia.gov</a>	All records associated with the Board of Social Work
<b>Board of Veterinary Medicine</b> Leslie Knachel, Executive Director <a href="mailto:vetbd@dhp.virginia.gov">vetbd@dhp.virginia.gov</a>	All records associated with the Board of Veterinary Medicine
<b>DHP Enforcement Division</b> Michelle Schmitz, Director <a href="mailto:enforcement.director@dhp.virginia.gov">enforcement.director@dhp.virginia.gov</a>	All records of open investigations and all records of closed investigations concerning unlicensed practice
<b>DHP Healthcare Workforce Data Center</b> Elizabeth Carter, Director <a href="mailto:hwdc@dhp.virginia.gov">hwdc@dhp.virginia.gov</a>	All records associated with the Healthcare Workforce Data Center
<b>DHP Health Practitioners' Monitoring Program (HPMP)</b> Christina Buisset, HPMP Program Coordinator <a href="mailto:hpmp@dhp.virginia.gov">hpmp@dhp.virginia.gov</a>	All records associated with HPMP
<b>DHP Prescription Monitoring Program (PMP)</b> Ralph Orr, Director <a href="mailto:pmp@dhp.virginia.gov">pmp@dhp.virginia.gov</a>	All records associated with PMP
<b>Department of Health Professions (policies)</b> Elaine Yeatts, Senior Policy Analyst <a href="mailto:elaine.yeatts@dhp.virginia.gov">elaine.yeatts@dhp.virginia.gov</a>	All records associated with regulations and policies for the Department of Health Professions (DHP)

All of the individuals referenced above may be contacted at our main address: 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233-1463.

### **The Department's Responsibilities in Responding to Your Request**

- The Department 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 the Department is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow the Department to ask you to provide your name and legal address.
- FOIA requires that the Department 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) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you want). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.
  - 5) If it is practically impossible for the Department 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

The *Code of Virginia* states: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia. "

- You may have to pay for the records that you request from the Department. 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 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, the Department may require payment of the past-due bill before it will respond to your new FOIA request.

### **Commonly used exemptions**

The *Code of Virginia* **prohibits** release of “any reports, information or records received and maintained by the Department of Health Professions or any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding,…” (§ 54.1-2400.2)

The *Code of Virginia* allows any public body to withhold certain records from public disclosure. The Department of Health Professions 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))
- Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. (§ 2.2-3705.1(10))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12))
- Records of active investigations being conducted (§2.2-3705.3(2))
- Any tests or examination used to license or certify individuals (§2.2-3705.1(4))
- Applications for examination or licensure except to the applicant (§ 2.2-3705.5(2))
- Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1. (§ 2.2-3705.5(8))

The *Code of Virginia* also provides confidentiality for records of the Prescription Monitoring Program and the Health Practitioners’ Monitoring Program:

“All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) pursuant to subdivision 15 of § [2.2-3705.5](#). Records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.” (§ 54.1-2523)

“Records of the Health Practitioners' Monitoring Program, to the extent such records identify individual practitioners in the program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the proper functions as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.” (§ 54.1-2517)