

# **Rights & Responsibilities:**

## **The Rights of Requesters and the Responsibilities of the Commissioner of the Revenue's office 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 with circulation in the Commonwealth, 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 be withheld only if a specific, statutory exemption applies.

The purpose of FOIA is to promote an increased awareness by the public of governmental activities. FOIA requires that the law be interpreted liberally, in favor of access, and that any exclusion allowing public records to be withheld must be interpreted narrowly.

### **A Requester's FOIA Rights**

Citizens of the Commonwealth and representatives of the media with circulation in the Commonwealth may:

- Request to inspect or receive copies of public records, or both;
- Request that any charges for the requested records be estimated in advance;
- File a petition pursuant to § 2.2-3713 in district or circuit court to compel compliance with FOIA, if the requester believes that his or her FOIA rights have been violated; and
- Request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that the request be in writing, nor does it need to specifically state that records are being sought under FOIA. Please, however, note:

- It may be helpful to have a request in writing. This provides a record of the request. It also gives a clear statement of what records are being requesting, so that there is no misunderstanding over a verbal request. The Commissioner of the Revenue's office, however, will respond to verbal FOIA requests if not in writing.
- The request must identify the records sought with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that may be requested; rather, it requires that the request be specific enough so that the Commissioner of the Revenue's office can identify and locate the records sought.
- The request must ask for existing records or documents. FOIA provides a right to inspect or copy records; it does not apply to a situation where

general questions are asked about the work of the Commissioner of the Revenue's office, nor does it require the Commissioner of the Revenue's office to create a record that does not exist.

- The person requesting the records may choose to receive electronic records in any format used by the Commissioner of the Revenue's office in the regular course of business. For example, if records maintained in an Excel database are requested, the request 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 the Commissioner of the Revenue's office has questions about a request, the Commissioner of the Revenue's office will attempt to work with the person making the request to understand what information is being sought. Making a FOIA request is not an adversarial process, but the Commissioner of the Revenue's office may need clarification regarding the request.

**To request records from the Commissioner of the Revenue's office in the County of Middlesex, you may direct your request to Carrie DeGraw. She can be reached at 877 General Puller Highway, Saluda, VA 23149; Post Office Box 148, Saluda, VA 23149; 804-758-5332, 804-758-3052 (fax); or [c.degraw@co.middlesex.va.us](mailto:c.degraw@co.middlesex.va.us). You may also contact her with questions you have concerning requesting records from the County of Middlesex. 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@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.**

### **The Commissioner of the Revenue's Office Responsibilities in Responding to a FOIA Request**

The Commissioner of the Revenue's office must respond to a request within five (5) working days of receiving it. "Day One" is considered the day *after* the request is received. The five-day period does not include weekends or holidays. If a request is received after 5pm EST, the request will be considered received the following working day.

The reason for the request for public records is not required. The Commissioner of the Revenue's office will not ask why the records are being requested. FOIA does, however, permits the Commissioner of the Revenue's office to ask the requester's name and legal address.

FOIA requires that the Commissioner of the Revenue's office make one of the following responses to a request within the five-day time period:

- We will provide the requested public records in their entirety.
- We will withhold all of the public records requested, because all of the public records are subject to specific statutory exclusions. If all of the records are being withheld, the Commissioner of the Revenue's office must provide a response in writing. That written response must identify the volume and subject matter of the

- records being withheld and state the specific section of the Code of Virginia that protects the public record from disclosure.
- We will provide some of the public records requested but will withhold others. The Commissioner of the Revenue's office cannot withhold an entire record if only a portion of it is subject to an exclusion. In that instance, the Commissioner of the Revenue's office may redact the portion of the record that may be withheld and must provide the remainder of the public record. The Commissioner of the Revenue's office must provide a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
  - If it is logistically impossible for the Commissioner of the Revenue's office to respond to a request within the five-day period, the Commissioner of the Revenue's office must state this in writing, explaining the circumstances. This will allow the Commissioner of the Revenue's office seven (7) additional working days to respond to the request.

If the request is for a very large number of public records and the Commissioner of the Revenue's office cannot provide the records within twelve (12) days without disrupting other organizational responsibilities, the Commissioner of the Revenue's office may petition the court for additional time to respond to the request. FOIA, however, requires that the Commissioner of the Revenue's office make a reasonable effort to reach an agreement with the requester concerning the scope of the request or the production before petitioning the court.

## **Costs**

- The Commissioner of the Revenue's office may require a person seeking public records to pay for the records. FOIA allows the Commissioner of the Revenue's office to charge for the actual costs of responding to FOIA requests. This would include items such as 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 the Commissioner of the Revenue's office estimates that it will cost more than \$200 to respond to a request, the Commissioner of the Revenue's office may require the person seeking the public records to pay a deposit before the Commissioner of the Revenue's office proceeds with responding to the request.
- A person seeking public records may request that the Commissioner of the Revenue's office estimate in advance the charges for supplying the records requested. This will allow the person seeking the record to understand any costs up front or give him or her the opportunity to modify the request in an attempt to lower the estimated costs.
- If you owe money from a previous FOIA request that has remained unpaid for more than 30 days, the Commissioner of the Revenue may require payment of the past-due bill before it will respond to your new FOIA request.

## **Types of records**

The following is a general description of the types of records held by the Commissioner of the Revenue's office:

- Personnel records concerning employees and officials of the Commissioner of the Revenue's office.
- Records of contracts which the Commissioner of the Revenue's office has entered into.
- Tax Assessments for businesses, including meals tax, transient tax, personal property for businesses and individuals, and real estate ownership and assessment information.

If you are unsure whether the Commissioner of the Revenue's office has the record(s) you seek, please contact the FOIA Officer, Carrie DeGraw, directly at 877 General Puller Highway, Saluda, VA 23149; Post Office Box 148, Saluda, VA 23149; 804-758-5332; 804-758-3052 (fax); or [c.degraw@co.middlesex.va.us](mailto:c.degraw@co.middlesex.va.us).

## **Commonly used exemptions**

The Code of Virginia permits any public body to withhold certain records from public disclosure. The Commissioner of Revenue commonly withholds records subject to the following exclusions (although other exclusions under the Act or the Code of Virginia may also protect a public record from disclosure):

- 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))
- Confidential tax information § 58.1-3
- View the [Code of Virginia, Section 2.2-3705.1](#) for a complete list of exemptions
- The Code of Virginia allows any public body to withhold certain records from public disclosure. The Commissioner of the Revenue does retain records that contain confidential information and will withhold records subject to the exemptions in Virginia State Code § 2.2-3705.1 and § 58.1-3.

## **Policy regarding the use of exemptions**

*The County does not have a written policy regarding statutory exemptions. It is the general policy of Middlesex County to invoke exemptions to protect employee privacy, citizen privacy, confidentiality, negotiation/bargaining position, investigations and legally privileged materials. Exemptions are exercised on a case by case basis.*