
Subject: Responding to Virginia Freedom of Information Act Requests

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1. Purpose

This policy provides guidance for monitoring and responding to Virginia Freedom of Information Act (FOIA) requests. This document also outlines the conditions under which Virginia Tech 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.

1.1 Background

Pursuant to the Virginia FOIA, Virginia Tech must ensure that people of the Commonwealth have ready access to public records in the custody of Virginia Tech and its officers and employees. The Virginia FOIA provides time frames for responding to such requests, as well as exemptions of certain items from disclosure, and allows that Virginia Tech may assess reasonable charges for the provision of public records to requesters.

This policy specifies procedures for determining and documenting allowable charges by Virginia Tech employees. The policy supplements information contained in the document titled, “Rights and Responsibilities: The Rights of Requesters and Responsibilities of Virginia Polytechnic Institute and State University under the Virginia Freedom of Information Act,” posted on the Virginia Tech website (<http://www.policies.vt.edu/FOIAa.php>).

1.2 Scope

This policy applies only to the production of existing documents subject to disclosure under the terms of the FOIA. Neither this policy nor the Act requires that a record/document be created in order to provide the requested information or questions be answered that are not contained in an existing document. This does not, however, preclude the university from taking such action.

2. Policy

It is the policy of Virginia Tech to provide an open forum for inquiry and to make documents used to conduct university business available. This policy does not relieve Virginia Tech of its responsibility as custodian of these records nor does it prevent Virginia Tech from taking necessary precautions for the preservation and safekeeping of Virginia Tech files and documents.

Virginia Tech responds 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*.

Virginia Tech maintains a record of all FOIA requests received, responses provided, and charges assessed. At a minimum, that record shall include for each separate request:

- Name of requester
- Requested documents
- Date request received by Virginia Tech
- Date response sent to the requester
- Amount of charges assessed
- Amount of payment received

Virginia Tech assesses reasonable charges, as approved by the University Controller, 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 Virginia Tech and the requester.

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

Violations of the FOIA can subject Virginia Tech and its personnel to a lawsuit by any person denied his or her rights under the law and to penalties of up to \$2,500. Such penalties may be assessed on individual persons found to be in violation of the FOIA.

3. Procedures

The FOIA specifically states access to records “shall not be denied 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.”

3.1 Request Format

Requests for public records may be in writing, in person, by telephone or electronically transmitted and they need not make specific reference to the Virginia FOIA. The request must identify the requested records with reasonable specificity. The FOIA’s request for reasonable specificity may justify insistence on a written request; however, written requests are not required under the FOIA. Where there is no written request, the recipient of the request shall provide a written record of the request for clarity and future reference if necessary.

The Act allows Virginia Tech to request the name and address of the requester, but the requester does not need to reference FOIA verbally or in writing in order for FOIA to be applicable. Notwithstanding this, every request for information does not constitute a request under the FOIA. For example, Virginia Tech prepares many documents for public distribution, such as annual reports, brochures, press releases, research studies, admissions information, etc. Requests for these and similar types of information are not processed as FOIA requests and are not subject to the response time requirements set forth in the FOIA. However, in determining whether to deny a request for information that does not reference the FOIA (or open records laws), the receiving office should consider whether the request would otherwise be subject to FOIA.

The Act does not require that access to public records be provided to out-of-state residents.

3.2 Response

Unless otherwise agreed by all parties, all responses shall be within the five working days required by the FOIA. Should the requester and Virginia Tech agree to a response time not in conformance with that required by the FOIA, such agreement shall be put in writing.

FOIA permits five possible responses to requests:

1. The requested records are being provided.
2. The requested records are being entirely withheld.
3. The requested records are being withheld in part as permitted by the law.
4. The requested records could not be found or do not exist. If Virginia Tech knows that another public body has the requested records, the response shall include contact information for the other public body.
5. Request additional time and an additional seven working days in writing within the original five work day period, if needed.

Note: Virginia Tech may petition the appropriate court for additional time to respond when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search. Before proceeding with the petition, Virginia Tech shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

3.3 Form of Response

Responses may be either by paper or electronic medium. If the response is via electronic medium, the standard electronic format shall be e-mail with attachments of excel spreadsheets or pdf documents. Upon agreement by the requester and Virginia Tech for the provision of records in a non-standard format, the requester must agree to pay reasonable costs not to exceed the actual costs for the conversion of records to the non-standard format.

3.4 Responsible Office

The Office of University Relations shall generally be responsible for responding to FOIA requests, including preparation of any bills for such responses. Any work unit receiving such a request shall notify the University's FOIA Officer within The Office of University Relations immediately. The FOIA Officer and other staff within The Office of University Relations will work with the receiving unit, and, as needed, with University Legal Counsel to develop a response. It shall be the responsibility of the unit possessing the requested documentation to research and copy the requested records.

3.5 Billing

For non-routine requests, Virginia Tech shall charge a reasonable charge to cover Virginia Tech's personnel cost for researching, copying, or supplying the requested records. If providing the requested records involves non-standard medium, color or commercial-type copies, these charges may be based on a commercial copy service or other service providers' rates.

The requester will be informed if the cost of responding to the request will likely exceed \$200.00. Virginia Tech may request payment of a deposit not to exceed the amount of the advance determination. Such deposit shall be credited toward the final cost of supplying the requested records. If a deposit is requested, the time in which Virginia Tech must respond to the request stops running until the day the deposit is received.

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

3.6 Waivers of Charges

The FOIA Officer may waive any and all charges if he/she determines that responding to the request serves the public interest by significantly contributing to the public's understanding of Virginia Tech's operations or activities.

Waivers will not generally be granted if the requester has a commercial interest in the disclosure unless the public interest in disclosure is considered greater than the requester's commercial interest.

The decision not to charge for responding to a particular request shall not prohibit Virginia Tech from charging for responding to future requests from the same individual or organization, including requests similar to those previously received for which Virginia Tech did not assess a charge.

3.7 Documentation

Virginia Tech 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.

4. Definitions

Public Body - any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members.

Public Records - all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of, a public body or its officers, employees or agents *in the transaction of public business*.

Routine Information Requests - those requests that involve simple, day-to-day or usual requests for access to or copies of readily available, concise, and discrete information.

Non-Routine Information Requests - requests for access or copies of records that are not easily accessible, require more than the minimal effort for research, photocopying or providing electronic medium, or may be on the exemption list in the FOIA.

5. References

"Rights and Responsibilities: The Rights of Requestors and Responsibilities of Virginia Polytechnic Institute and State University under the Virginia Freedom of Information Act" (<http://www.policies.vt.edu/FOIAa.php>).

6. Approval and Revisions

Approved September 16, 2009 by Vice President for Development and University Relations, Elizabeth A. Flanagan.

- Revision 1

The policy has been revised to reflect that the responsibility rests within the Office of University Relations. Previously, the policy named the Associate Vice President of University Relations as the FOIA Officer. In addition, the provision stating that requests from non-Virginia citizens would generally be responded to in the same manner as requests from citizens of Virginia has been removed. Requests by non-citizens of Virginia are not contemplated by the Virginia Freedom of Information Act statute. The discretion to respond to such requests is at the discretion of the Office of University Relations.

Approved June 30, 2017, by Vice President for Advancement, Charles D. Phlegar.