

## **Freedom of Information Act (FOIA) Policy**

### **The Rights of Requesters and the Responsibilities of the Town of South Hill under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), [§ 2.2-3700 et seq. of the Code of Virginia](#), guarantees citizens of the Commonwealth of Virginia, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth access to public records held by public bodies, public officials, and public employees during regular office hours of the custodian of such records. The custodian will require the requester to provide his name and legal address (VA Code § 2.2-3704). All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies. The purpose of FOIA is to promote an increased awareness and transparency of government activities and afford residents an opportunity to witness the operations of government.

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.

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

- You have the right to request, 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.

#### **How to Make a FOIA Records Request from the Town of South Hill**

FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA; however, it is strongly suggested that you, from a practical perspective, put your request in writing. This allows you and the Town 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; however, we will not refuse to respond to your FOIA request if you elect to not put it in writing.

To request records from the Town of South Hill, or for more information about requesting records, please contact Anna B. Cratch, FOIA Officer.

**Email:** [acratch@southhillva.org](mailto:acratch@southhillva.org)

**Phone:** (434) 447-3191

**In Person / U.S. Mail:** FOIA Request, South Hill Town Hall, 211 S. Mecklenburg Avenue, South Hill, VA 23970

### **Fulfilling a FOIA Request**

The Town of South Hill will respond to a request within five working days of receiving the records request. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays. FOIA requires that the Town of South Hill make one of the following responses to your request within the five working days:

- 1) Provide the records that have been requested in their entirety.
- 2) Withhold all the records requested, because all the records are subject to a specific statutory exemption. If all the records are being withheld, a response in writing will be sent with an explanation of the exemption. The response will identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows the records to be withheld.
- 3) Provide some of the records that have been requested, but withhold other records. An entire record will not be withheld only if a portion of it is subject to an exemption. In that instance, the portion of the record that may be withheld will be redacted, and the remainder of the record will be provided. A written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld will be sent.
- 4) Inform the requester 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, contact information for the other public body will be included in the response.
- 5) If the Town of South Hill cannot respond to a request within the five working days, the requester will be informed in writing, explaining the conditions that make the response impossible. This will allow the Town seven additional working days to respond to the request, giving a total of 12 working days to respond to the request.

If a request is made for a very large number of records, and it is determined that it cannot be provided within 12 working days without disrupting other organizational responsibilities, the Town may petition the court for additional time to respond to the request; however, FOIA requires that a reasonable effort be made to reach an agreement

with the requester concerning the production of the records before going to court to ask for more time.

## **Costs**

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.

If requested, an estimate of the charges will be provided prior to supplying the records requested. This will allow the requester to know about any costs upfront or give the opportunity to modify the request in an attempt to lower the estimated costs. If the estimated cost is more than \$200, a deposit will be required (not to exceed the amount of the estimate), before proceeding with the request. The five working days to respond to a request does not include the time between when asking for a deposit and a response from the requester. All deposits shall be paid by check or money order made payable to the Town of South Hill and delivered to the Town Clerk's Office (Town Hall, 211 S. Mecklenburg Avenue). Checks and money orders will be held and only deposited once the request is complete. Any outstanding balance due must be paid before or at the time the responding records are released. If money is owed from a previous FOIA request, the Town of South Hill will require payment of the past-due bill before responding to a new request.

Costs include items such as staff time, copying costs or any other costs directly related to supplying the requested records. It will not include general overhead costs. Personnel time for responses to a FOIA request that require 30 minutes or less of time spent searching will not be charged to the requester. The time fee charged for responses shall be based upon the annualized Town pay rate, plus the total annual costs of regular Town benefits for the individual(s) preparing a response to a FOIA request. In addition to personnel time, fees charged for copying and other costs shall be as follows:

- Copies: \$0.15 per page
- Copies larger than 11 x 17 and/or requiring specialized equipment to reproduce: as determined by responding personnel, based on actual costs
- A double-sided document counts as two pages
- Thumb drive, flash drive, USB, etc.: based on actual costs
- Actual mail costs will apply
- Other/specialty items: as determined by responding personnel, based on actual costs

## **General Guidelines**

A request must identify the records needed with "reasonable specificity." It does not refer to or limit the volume or number of records requested; instead, it requires that a request be specific enough to identify and locate records.

A request must ask for existing records or documents. FOIA allows for inspection or copying of records; it does not apply to a situation asking general questions about the work of a department or the Town, nor does it require a department to create a record that does not exist.

Records can be provided in the format in which they were created. For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via email, thumb/flash drive, etc., or to receive a printed copy of those records. You may be contacted if there are questions about a request, to ensure that the appropriate records are being provided.

## **Commonly Used Exemptions**

The Code of Virginia allows any public body to withhold or exempt (redact) certain records from public disclosure. The Town of South Hill commonly withholds or exempts records such as:

- Portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body (VA Code § 2.2-3705.01 (13))
- Personnel records (VA Code § 2.2-3705.1 (1))
- Records subject to attorney-client privilege (VA Code § 2.2-3705.1 (2)) or attorney work product (VA Code § 2.2-3705.1 (3))
- Vendor proprietary information (VA Code § 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (VA Code § 2.2-3705.1 (12))
- Confidential Tax Information (VA Code § 58.1-3)
- Criminal investigative files (VA Code § 2.2-3706 (A)(2)(a))
- For a full list of exemptions, see VA Code § 2.2-3705.1

## **Policy Regarding the Use of Exemptions**

- It is the Town of South Hill's general policy to exempt any and all records that are allowed to be exempted, redacted, or excluded from production by law.
- Any record exempt under the Virginia Code, which the custodian of the record has the option of disclosing, shall not be disclosed.

### **For More Information**

The Freedom of Information Advisory Council is available to answer any general questions about FOIA. The Council may be contacted by email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), by phone at (804) 698-1810, or [toll-free] 1-866-448-4100.

More information is available on the Virginia Freedom of Information Advisory Council's website at <http://foiacouncil.dls.virginia.gov/foiacouncil.htm>.

Please note that various forms and sample letters can be found at <http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>.