

FREEDOM OF INFORMATION ACT COMPLIANCE PROTOCOL

I. Purpose

This protocol is intended to define the operating procedure to provide access to the Commission's public records in response to a request made pursuant to the Freedom of Information Act, VA. Code § 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.

II. Information about FOIA

The general policy of the Commonwealth, under FOIA, is that all public records and meetings are presumed open. Naturally, there are exceptions to this policy; however, the records and meetings which may be exempted from coverage under FOIA are to be determined by the Commission's Compliance Officer or designee (collectively, "Compliance Officer") in concert with the Commission.

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.

Records may be requested by U.S. Mail, fax, e-mail, in person, or over the telephone. FOIA does not require that a request be in writing, nor does the requestor need to specifically state that they are requesting records under FOIA.

The Executive Director shall be the FOIA Compliance Officer for the Commission.

Any request that is presented that is not clearly exempted or is questionable shall be sent to the Compliance Office for clarifications.

III. Procedures

- A. A request made by a Commonwealth citizen or entity.
 1. The employee will record the request, if verbal, noting the date, time, the requestor's name, address, telephone number, and e-mail address, if applicable.
 2. The employee will note any specific information regarding how the requestor wishes the records to be produced, e.g., paper, disk, electronic file.
 3. The employee is to give this information to the Compliance Officer *immediately or respond appropriately to the request and cc the Compliance Officer on the response.*
- B. The employee must respond to requests 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.
- C. Within two (2) working days, the Compliance Officer, *or employee*, will determine whether the records sought are public and are available from the Commission.
 1. If the records are, in whole or in part, exempted from production or are not records kept by the Commission, *or employee*, in the ordinary course of business, the Compliance Officer will notify the requestor in writing why the records will not be produced, citing the pertinent Code section(s) exempting the records where appropriate.
 2. The following charges shall apply to copies of documents provided in accordance with FOIA and the Commission's FOIA Protocol:

Fee Schedule:

- No charge for the first ten (10) pages.
- \$.25 per page for all documents copied for eleven (11) or more pages. This fee must include the first ten pages printed. For example, copying fifteen pages will incur a charge of \$3.75.
- Certified copies shall incur an additional \$2.00 processing fee.
- Imaged files may be copied to a CD for a flat fee of \$25.00.
- Paper files may be imaged and copied to a CD for \$1.00 per page.
- A request for information for the purposes of determining eligibility for employment shall include a \$25.00 search fee.

3. If a response to a FOIA request requires extraction of information from electronic databases maintained by the Commission, then, in addition to the cost of documents provided in response to a FOIA request as set forth in the above schedule, the actual cost of extracting such information from the electronic databases and producing the requested report in tangible medium shall be charged to the requestor. For example, if a FOIA request requires a member of the Commission's Information Systems Department to spend two hours retrieving the data and producing it in a tangible medium, then the requestor shall be charged a sum equal to the hourly rate to pay such staff member times two.
4. The Commission shall not be required to provide records from an electronic database in a format not regularly used by the Commission. However, the Commission shall make reasonable efforts to provide records in any format according to such terms and conditions as agreed between the requestor and the Commission, including payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.
5. The Commission may charge such other sums in connection with FOIA requests as may be authorized by VA. Code §2.2-3704, or as amended or reenacted periodically.
6. A request for information for the purposes of determining eligibility for employment is not a request covered by FOIA and shall not be subjected to this protocol. A \$25.00 search fee shall continue to apply to such requests as per prior Commission policy.
7. Before processing a request, the Commission shall require the requester to pay any amounts owed to the Commission for previous requests for records that have remained unpaid for 30 days or more after billing.
8. If there will be any cost incurred, the Compliance Officer, *or employee*, will notify the requestor. If the cost will be greater than \$200, a deposit may be required. If the Commission requires a deposit, a notification to the requestor of this fact will stay the running of the production deadline until the deposit is received.
 - a. If the requestor agrees to pay the costs, the procedures continue.

- b. If the requestor refuses, the Compliance Officer, *or* employee, will notify the requestor, in writing, that no records will be produced.
- D. Within three (3) working days after the request, the Compliance Officer, *or* employee, will notify the Commission department maintaining the records sought of the FOIA request.
1. The Compliance Officer, *or* employee, will specify the records needed and the period within which they must be produced.
 2. If the records cannot be produced within the required time frame, the department head or designee will notify the Compliance Officer, *or* employee, as soon as practicable, but under no circumstances later than the time specified in (D) (1) above.
- E. The Compliance Officer will provide the requested records to the requestor within five (5) working days after receipt of the request.

FOIA requires that one of the following responses to a 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.
- F. If the records cannot be produced or their availability cannot be determined within five (5) working days, the Compliance Officer, or employee, must:
1. Within five (5) working days, notify the requestor, in writing, specifically why the records will or will not be produced within the statutory period (five days).
 2. The Compliance Officer, or employee, must then produce the records within seven (7) working days, twelve (12) days after the request was originally made.
 3. If it is determined that the records are not available from the Commission, the Compliance Officer, *or employee*, must then notify the requestor, in writing, within seven (7) working days, (12 days after the request was originally made).
- G. If the employee determines that the response cannot be completed in 12 days they must report to the Compliance Officer that the Commission can not comply with the request within 10 days of the initial request. If the Compliance Officer determines that the above procedure cannot be performed within the statutory period, a petition must be made before the Circuit Court of the City of Richmond or other appropriate court within the statutory period.
1. Petitioning a court may occur only where the records sought are of extraordinary volume and to comply would prevent the Commission from meeting its operational responsibility.
 2. Before filing a petition, the Commission must make reasonable efforts to reach an agreement with the requestor concerning production of the documents.

H. The general policy of the Commission is to follow the FOIA exemptions provided for meeting exemptions under §2.2-3711(A) (1) and to records under exemptions under §2.2-3705.1 (1)-(12) and §2.2-3705.2 (2)-(6) §2.2-3705.24 (1), §2.2-3705.5 (1), and §2.2-3705.6 (10).

I. The Commission shall make a report of the existence of any information system that it operates or develops that shall include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of the information shall be made available for inspection by the general public in the office of the Executive Director. Copies of the information shall be provided upon request and a fee shall be charged for them sufficiently to cover the reasonable costs of reproduction.

IV. The Virginia Workers' Compensation Commission's Compliance Officer is designated as the agency's Executive Director, effective October 9, 2009.