

## FREEDOM OF INFORMATION ACT

### I. Purpose

This Guideline establishes the policies and procedures concerning responding to requests under the Virginia Freedom of Information Act (FOIA) so that requests may be handled as efficiently as possible, and within the required timeframes. Deadlines must be strictly observed, subject to court fines if not.

### II. Responsibility

It is the responsibility of all Department Heads to be familiar with and maintain all information contained within this and any other Guideline. Specific responsibility is assigned to the City Clerk and/or the Department Head who are the custodians of the requested records.

### III. Definitions

- **Custodial possession:** The control and storage of official records by a City department.
- **Electronic records:** Those official records in the custodial possession by a City department that exist solely as electronically-recorded data within a computer or computer system network, including such records that may be kept on physical electronic recording media but which do not exist as paper records.
- **Exempt records:** Those official records that are exempt from FOIA such as tax information, medical and mental records, personnel and scholastic records, legal counsel, library records, and security or emergency information such as vulnerability assessments or response plans. Exemptions may be exercised (records may be withheld) for other types of documents and records. For a complete list of exemptions see Virginia Code Title 2.2, Chapter 37.
- **FOIA:** Virginia Freedom of Information Act
- **Oversize records:** Those official paper records in the custodial possession of a City department that cannot be easily reproduced by office photocopiers (usually paper larger than 11” by 17”)
- **Supervised access:** The means of facilitating access to certain official paper or electronic records in the custodial possession of a City department where, due to the uniqueness, physical or recording media characteristics or

other attributes of the record document or media, the requesting party must be assisted by a City employee during an inspection of same. Typically, such official records cannot be easily photocopied, reproduced or printed.

#### IV. Policy

**A. Compliance to Virginia Code Title 2, Chapter 37, §2.2-3704:** The City of Lexington will comply with the Virginia Freedom of Information Act that states, “*all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records.*” Furthermore, “*The custodian of such records shall take all necessary precautions for their preservation and safekeeping.*” Note: The City, in most circumstances, does not have to respond to citizens not of the Commonwealth.

**B. Request Requirements:** The City of Lexington requires the following information from the requestor of records:

1. Requestor must identify his/her request under the Virginia Freedom of Information Act or FOIA to be subject to the VA Code
2. Requests must contain:
  - a. Date of request
  - b. Type of request (Written, Email, Verbal/In Person, Verbal/Telephone)
  - c. Person and Department receiving request
  - d. Requestor’s Name, Response Mailing Address, Phone, Email
  - e. Type of records requested with “*reasonable specificity.*”

**C. City Response Requirements:** For any request made pursuant to the Virginia Freedom of Information Act, a response is required within five (5) working days. (The workday following receipt of the request is considered the first working day.) Prompt attention is critical. Employees receiving such a request shall:

1. Refer the request immediately to the City Clerk or
2. Make one of the following responses, within five (5) working days:
  - a. **Provide all** - provide all of the items requested immediately, if readily available, or provide the items within five (5) working days of the request, if they can be made available within that time.

- b. **Provide some** - provide some of the items requested and withhold some. Consult with the City Attorney prior to withholding any documents. Upon the Attorney's approval, respond to the requester in writing, within five (5) working days of the request, citing the Virginia State Code section authorizing the withholding, and enclosing a copy of the Code section (see attached).
- c. **Withhold all** - withhold all of the items requested. Consult with the City Attorney prior to withholding any documents. Upon the Attorney's approval, respond to the requester in writing, within five (5) working days of the request, citing the Virginia State Code section authorizing the withholding, and enclosing a copy of the Code section (see attached.)
- d. **Invoke 7 additional working days** - If the request can't be reasonably met within five (5) working days, respond to the requester in writing within five (5) working days, invoking an additional seven (7) working days to respond to the request, Then respond, within the additional seven (7) working days, as described in 2.a., 2.b., or 2.c. above.

## V. Procedure

- A. **FOIA Request and Response Form:** Each FOIA request must be written on the top half of page one on the attached form, "CITY OF LEXINGTON, VIRGINIA RESPONSE TO REQUEST PURSUANT TO VIRGINIA FREEDOM OF INFORMATION ACT" (Lexington FOIA Form)
  - 1. If the request has arrived in writing (letter or email), transfer the requester's contact information onto the Lexington FOIA Form (top half of page one.), and note "See attached" for the "Description of Records..."
  - 2. If the request arrives verbally/in person, write down the information on the top half of page one of the Lexington FOIA Form, and have the requestor read what is written and acknowledge accuracy by initialing in the box provided.
  - 3. If the request arrives verbally/over the phone, write down the information on the Lexington FOIA Form. When you have completed the top half of page one, read the entire information back to the requestor and ask him/her to acknowledge that it is correct. If

s/he has corrections, make those changes, then read it again and have him/her acknowledge that it is correct. Note the acknowledgment on the form in the box provided.

**B. Method:** The choice for inspection of records versus receiving copies of records belongs to the requestor. The City may impose labor rates for supervision, as well as accessing or searching for the requested records.

**C. Fees:** *“A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records”* (Virginia Code §2.2-3704(F)).

1. Accordingly, Lexington has imposed the following reasonable fees:
  - a. Copying at five (5) cents per black and white copy and ten (10) cents per color copy (unless unusual circumstances, all copies will be black and white.)
  - b. Labor at the hourly rate of the administrative support staff in the responding department.
  - c. Copying electronic records onto CDs is \$3.00 per CD plus labor, but there is only a labor fee for non-exempt records emailed to the requestor. Electronic records printed and provided in paper form are subject to fees described above. The requestor can choose the medium by which to receive the information.
2. *“Always tell requesters in advance whether there will be a charge and a general breakdown of how charges will be calculated”* (Taking the shock out of FOIA charges, Virginia Freedom of Information Advisory Council, June, 2014).

**D. Collection of Fees**

1. The City has elected not to charge for filling requests that have an actual cost of less than \$50.
2. If the estimated cost is \$50-\$199.99, the City will bill the requestor with a due date of 30 days. The requested materials can be provided to the requestor without advance payment.
3. If the estimated cost is over \$200, do not process the request until the estimate is paid in advance. If the actual cost exceeds the estimate, the City will bill the balance to the requestor with a 30-day

due date. If the actual cost is lower than the estimate, the difference will be refunded to the requestor.

4. If the requestor has an open balance on any billings for FOIA requests that are 30 days old or older, the requestor must pay the open balance before the new request can be processed.

#### **E. Exceptions**

1. Lexington is not required to create records that do not already exist.
2. Lexington is not required to abstract or summarize records.
3. Lexington is no longer the custodian of records that have been sent to The Library of Virginia for permanent archiving.
4. Lexington may require supervised inspection if oversized records are not reproducible on a standard copier.
5. Lexington and the requestor of records can negotiate a different timeframe with reduced costs, as mutually agreed prior to the five-day timetable, or prior to the seven-day extension.
6. Lexington *“may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by [Virginia Code Chapter 37]...will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records”* (Code of Virginia §2.2-3704 C)

#### **F. Recommendations**

1. Place commonly requested non-exempt documents on the City Website and direct requestors to the Website.
2. Have available copies of routinely requested non-exempt records.

Note: Index 0880 has three attachments: Lexington FOIA Form, VA Code excerpt, Citizens Guide

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Noah A. Simon, City Manager

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Date

#### Bibliography:

1. Virginia Code (online)
2. Taking the Shock out of FOIA Charges (booklet by the VA FOIA Advisory Council, 2014)
2. 2014 Montgomery Co FOIA Policy
3. Shenandoah County FOIA REQUEST REPLY FORM