

# **Rights & Responsibilities:**

## **The Rights of Requesters and the Responsibilities of Hanover County government 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 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 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.

### **Your FOIA Rights**

- You have the right to request to 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.

### **Making a Request for records from Hanover County**

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor

do you need to specifically state that you are requesting records under FOIA.

- From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you 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 over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of a department, nor does it require the government to create a record that does not exist.
- You may choose to receive electronic records in any format used by Hanover County government in the regular course of business.
  - For example, if you are requesting records maintained in an Excel database, you 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 we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from Hanover County departments, you may direct your request to the department or to Tom Harris, Public Information Officer. He

can be reached at [htharris@hanovercounty.gov](mailto:htharris@hanovercounty.gov) or in the County Administrator's Office at (804) 365-6005. You may also contact him with questions you have concerning requesting records from Hanover County government. 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.

### **Hanover County's Responsibilities in Responding to Your Request**

- Hanover County must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from Hanover County is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow Hanover County to require you to provide your name and legal address.
- FOIA requires that the local government make one of the following responses to your 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 Hanover County 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.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go 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.

- You may have to pay for the records that you request from Hanover County. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like 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 County estimates that costs will be under \$200, you will be provided with an invoice for costs when you are provided with the requested records. Invoices are required to be paid within 30 days of receipt, or payment may be made at the time requested records are received.
- If the County estimates that costs will exceed \$200, a deposit will be required prior to processing your request. The deposit may not exceed the estimated charges and will be credited toward the final cost of supplying the requested records. The five days to respond to the request do not begin until the requester has paid the deposit. Should the actual cost be less than the deposit, any balance remaining from the deposit will be refunded. In certain cases in which costs are estimated to exceed \$200, the County may require a deposit in the full amount of the estimate, or may require a deposit in a lesser amount and the balance paid before the records are provided.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, Hanover County may require payment of the past-due bill before it will respond to your new public records/FOIA request.

### **Types of records**

The types of records kept by Hanover County include but are not limited to:

- Personnel records concerning employees and officials of Hanover County
- Records of contracts which Hanover County has entered into
- Procurement information
- Meeting minutes of the Board of Supervisors and Planning Commission
- Site plans and construction permits
- All other types of records commonly kept by a local government.

If you are unsure whether Hanover County has the record(s) you seek, please contact Tom Harris directly at 365-6005 or [hatharris@hanovercounty.gov](mailto:hatharris@hanovercounty.gov)

### **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. Hanover County commonly withholds records subject to the following exemptions, among others:

- 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))
- Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to completion of such purchase, sale or lease (§ 2.2-3705.1 (8))
- Names of complainants in alleged zoning and building inspection violations (§ 2.2-3705.3 (9))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))

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

Records may be withheld entirely or in part because their release is prohibited by other laws or because the County has exercised its discretion to withhold exempt records in accordance with FOIA. When records are withheld, the County's response shall be in writing within five (5) work days of the original request. The response shall identify with reasonable specificity the volume and subject matter of withheld records and cite, as to each category of withheld records, the specific code section that authorizes the withholding of the records.

Public records requests submitted to the County become public records and therefore are subject to disclosure under FOIA unless an exemption applies.

In addition to FOIA, certain state and federal laws outside of FOIA prohibit disclosure of specific types of records and specific types of information contained in records maintained by the County.