

Rights & Responsibilities

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 and representatives of the media with circulation in Virginia* 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 purpose of FOIA is to promote an increased awareness by all persons of governmental activities. To further this objective, FOIA requires a liberal interpretation of the law, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- As a citizen of Virginia or representative of media with a circulation in Virginia, 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.

Making a Request for Records from the Department of Professional & Occupational Regulation

- You may request records by U.S. Mail, fax, e-mail, in person, or by telephone. 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, the Department cannot refuse to respond to your FOIA request if you do 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 records or documents. FOIA gives you a right to inspect or copy **records**. It does not apply to asking general questions about the work of the Department of Professional and Occupational Regulation.
- You may choose to receive electronic records in any format used by the Department of Professional and Occupational regulation 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 the Department has 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 the Department may need to discuss your request with you to ensure a clear understanding of the request.

To request records from the Department of Professional and Occupational Regulation, you may direct your request or any questions concerning records from DPOR to Lexie Borkey, Public Records Manager. She can be reached at:

DPOR
Perimeter Center, Suite 400
9960 Mayland Drive
Richmond, Virginia 23233
Phone: 804-367-8583
FAX: 804-527-4293
recordsmgt@dpor.virginia.gov

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@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Department of Professional & Occupational Regulation's Responsibilities in Responding to Your Request

- The Department of Professional and Occupational Regulation 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 the Department is not a consideration when responding to a record request and the agency cannot require that the requestor provide an explanation for the request prior to releasing the records. FOIA does, however, allow the Department to ask you to provide your name and legal address to confirm that, as a citizen of the Commonwealth or representative of media, you are subject to the benefits of FOIA.
- FOIA requires that the Department of Professional and Occupational Regulation make one of the following responses to your request within the five-day period:
 1. Provide the records that have been requested in their entirety.
 2. Withhold all the requested records because the records are subject to a specific statutory exemption. If all of the records are withheld, a written response identifying the volume and subject matter of the records and the specific section of the *Code of Virginia* that allows the Department to withhold the records will be provided.
 3. Provide some of the requested records, but withhold other records. The Department cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, DPOR may redact the portion of the record that may be withheld, provide the remainder of the record, and include a written response stating the specific section of the *Code of Virginia* that allows portions of the requested records to be withheld.

4. If it is practically impossible for the Department of Professional and Occupational Regulation to respond to your request within the five-day period, the Department must state this in writing, explaining the conditions that make the response impossible and request an additional seven working days to respond to the request.
 - If you make a request for a very large number of records, and the Department determines that it cannot provide the records to you within 12 days without disrupting other organizational responsibilities, DPOR may petition the court for additional time to respond to your request. However, FOIA requires that state agencies make a reasonable effort to reach an agreement with you concerning the production of the records before petitioning the court to ask for more time.

Costs

- You may have to pay for the records that you request from the Department of Professional and Occupational Regulation. FOIA allows state agencies to charge for the actual costs of responding to FOIA requests. This would include items such as staff time spent searching for the requested records, photocopying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If the cost of responding to your request is estimated at more than \$200, the Department may require payment of all or a portion of the estimated cost prior to proceeding with your request.
- You may request an advance estimate of charges for supplying the requested records. This will allow you the opportunity to decide whether you want to modify your request in order to reduce the cost to you.
- If you made a prior FOIA request that remains unpaid for more than 30 days, the Department may require payment of that amount before a new request is processed.

Commonly Used Exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Department of Professional and Occupational Regulation commonly withholds records subject to the following exemptions:

- Applications for licensure or admission to examinations (§ 54.1-108.2 of the *Code of Virginia*).
- Records of active investigations being conducted by the Department or any board (§ 54.1-108.3)
- Personnel records (§ 2.2-3705.1 (1))
- 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))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))