

CITY OF PORTSMOUTH
ADMINISTRATIVE POLICY

#19

SEPTEMBER 2015

SUBJECT: Freedom of Information Act (FOIA)

I. PURPOSE

The purpose of this policy is to set forth a uniform set of procedures for City of Portsmouth employees to follow in processing requests for “public records,” a term which is defined under the Virginia Freedom of Information Act (FOIA) to include all writings and recordings, regardless of format (paper, electronic, etc.), prepared or owned by public officials in the transaction of public business. For purposes of this policy, the terms “records” and “documents” are used interchangeably and “documents” includes e-mail and other electronic communications.

FOIA is a state law adopted to ensure public access to government records and meetings. One of the purposes of FOIA is to “promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.” The Act presumes that all public records and meetings are open to the public unless an exemption specifically allowed by the Act is invoked. Another purpose of the Virginia Freedom of Information Act is to prevent an “atmosphere of secrecy” in the affairs of government. It is the City’s intent to conduct its business in the full view of the public unless it is clearly in the public interest not to do so as allowed under the Freedom of Information Act. In addition, it is the City’s obligation and policy to fully comply with the Act and maintain an open and transparent government as good stewards of the trust placed in us by our citizens.

II. FOIA REQUESTS

A. Initiation of Requests

When a citizen of Virginia or a representative of a media outlet serving the Commonwealth of Virginia asks for access to a public record in the custody of the City, the request should be processed under this policy. Requests for records should be handled by the department or office that has custody of the records. In general, department heads are responsible for fulfilling requests for records and complying with the provisions of the Act. In the case of requests for records involving more than one department, the request should be referred to a Deputy City Manager.

The person making the request does not have to make a specific reference to the Act; does not have to state any reason for making the request or disclose why they want the information; and does not have to put the request in writing. Any request for any public record is technically covered under the Act and should be handled in a highly responsive and professional manner.

Most City records are public documents available to any Virginia citizen or media representative who makes a request. (The requester does not have to live in Portsmouth; the FOIA only requires that the requester live in Virginia.) FOIA applies to existing records only and does not require the City to perform new analyses, studies, or to create new documents.

Some City records are allowed to be exempt from disclosure by Virginia law, although the law does not require that any of the exemptions be invoked. In other words, the City may decide to exempt records if the Act allows that but may also disclose them if it so chooses, except where disclosure is prohibited by law for documents such as tax returns, medical records, and records of social service agencies about specific clients. Any questions regarding the exempt status of a requested record should be referred to the City Attorney's Office. If a record contains both exempt and non-exempt information, the non-exempt parts of the record should be made available by redacting the exempt information. If information is being withheld, a letter must be sent to the requester identifying what is being withheld and citing the specific state code provision that authorizes the exemption. (See Va. Code 2.2-3704 B.3.)

B. Details of Requests

The Act requires that the person requesting records identify reasonable details about the information they are requesting. In order to provide accurate information efficiently, City staff should communicate with the requester to determine exactly what the person is requesting. If the request is non-routine and is not submitted in writing, then the City staff person receiving the verbal request should document the request, including the date and time received and the name and address of the person requesting the information. Upon response to a non-routine request, the City staff person should also document the date of the department's response.

C. Time Requirements

In accordance with the Act, the City has five workdays to respond to a request for documents. The workday after the request is received is counted as day "one." If it is not practical to provide the requested documents or to determine whether they are available within this period, you must inform the requester of this fact in writing within the original five workdays stating the reason(s) the City is unable to provide the documents within the five-workday period. FOIA does permit an additional seven workdays in which to respond if needed.

For very large requests, upon mutual agreement with the requester, a longer time extension may be required. In extreme cases, the Act allows the City to petition the Circuit Court for more time to respond.

D. Routine Requests

The City receives routine requests for public documents on a daily basis. They involve copying fewer than 20 pages of easily accessible, clearly public records. These documents can be immediately provided by the City staff member or soon thereafter as FOIA allows five workdays to respond if needed. The City does not charge a fee for responding to these routine requests.

E. Non-Routine Requests

A non-routine request may involve:

- A large amount of documents (e.g., more than 20 pages).
- Documents that are not easily accessible.
- Documents that require research to determine the exempt status.
- Any project that takes more than 15 minutes of staff time.
- Any request that involves coordinating document retrieval from many departments, or an e-mail/computer documents search performed by the Information Technology Department.

F. Format

The City will make reasonable efforts to provide the documents in any format and under such terms and conditions as agreed to by the requester and the City to include the payment of reasonable costs. In general, records available in electronic format should be provided in that format. The City is not required to produce records from an electronic database in a format not regularly used in operations.

G. Response to Requests

FOIA permits the City to respond to a request for records by providing the requested records, withholding some or all of the requested information in accordance with law, or by requesting additional time in writing within the original five workday period, if needed. Any withholding of information should be previously discussed with the City Attorney's Office prior to responding.

III. ADMINISTRATIVE FEES

A. Charges

Under FOIA, charges may be made for actual costs, including staff time for accessing, supplying, researching, and the cost of copying documents. The copy charge for more than 20 pages of paper copies is \$0.05 per page for black and white copies plus the cost of the staff copying time. Copies requested will be

printed in black ink unless the requester specifically requests color copies which will be \$0.09 per page plus the cost of staff copying time.

Large copy jobs may be taken to a commercial copy service. In this case, the copy charge is the actual charge by the commercial service plus staff time.

If the materials are picked up by the requester, charges for copying are due and payable upon pick up unless the City has made an agreement with a company or individual to bill them for charges. If the materials are mailed to the requester, the cover letter should include the amount owed for the response to the request. The collection of copying charges should be handled the same as any other bill owed to the City. For any request that takes more than 15 minutes of staff time in researching, locating, and/or copying records, the City will charge the actual cost of the staff effort. Staff time is figured at the person's hourly rate, not to include fringe benefits. Checks for FOIA charges should be made payable to the Portsmouth City Treasurer.

B. Payment in Advance

For any request involving significant staff time or significant copy charges, estimate the cost of processing the request before beginning the work and inform the requester in writing of the estimated cost to comply with the request. If the cost is estimated to exceed \$200, require the requester to agree to the payment of a deposit not to exceed the estimated cost. Await the response from the requester before staff begins to process the request. The required time periods are suspended until you receive a response from the requester.

C. Delinquent Charges

The City is not required to process a request for records from any person who has not paid in full within 30 days after billing for a previous FOIA request.

IV. COMPLIANCE

A violation of FOIA is not a crime, however, it can subject the City to a lawsuit by any person denied his or her rights under the law. A judge may order the City to release the documents to the requester and pay the requester's attorney's fees. If a court rules that a violation of FOIA is intentional, monetary penalties can be assessed against the individual who withheld the documents.

Employees who fail to take appropriate action in accordance with this policy will be subject to disciplinary action under the City's Employee Standards of Conduct.