

FOIA Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of the Town of Port Royal 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 stated purpose of FOIA is to promote an increased awareness of governmental activities by all persons. To promote 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 and applied narrowly.

Your FOIA Rights

- Virginia citizens have the right to ask to inspect **or** receive copies of public records, or both.
- Virginia citizens have the right to ask that any charges for the requested records be estimated in advance.
- If a Virginia citizen believe that his or her FOIA rights have been violated, he or she may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, he or she may contact the Virginia Freedom of Information Advisory Council (see below) for a nonbinding advisory opinion.

Making a Request for records from the Town of Port Royal

- A Virginia citizen may request records from the Town of Port Royal by U.S. Mail, fax, e-mail, over the phone, or in person. 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 the citizen and the Town officer or employee receiving your request to put the request in writing. This allows for the creation of a record of the request. It also gives the Town a clear statement of what records are requested, so that there is no misunderstanding over a verbal request. However, the Town cannot refuse to respond to your FOIA request just because you decline to put it in writing.
- A request for public records must identify the records being sought with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that are requested; instead, it requires that the request be specific enough so that the respondent can identify and locate the records requested.
- A request for public records must ask for existing records or documents. FOIA provides for a right to inspect or copy **records**; it does not provide a right to insist that Town officials do research on behalf of a requester or respond to a list of questions from about Town-related matters, nor does it require Town officials to create a record that does not already exist.
- A citizen may choose to receive electronic records in any format that the Town uses in the regular course of business.
 - For example, if records maintained in an Excel database are requested, the requester 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 a request, please cooperate with staff's efforts to clarify the type of records sought, 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 Town may need to discuss a request with to be sure that it is understood what records are of interest.

Requests for Town records or questions about them may be directed to Terri Harrison, Town Clerk, who has been designated as the Town's FOIA officer. Ms. Harrison can be reached by e-mail: townofportroyal1744@gmail.com or phone: (804) 742-5331.

In addition, the Virginia Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. E-mail: foiacouncil@dls.virginia.gov , or phone: (804) 225-3056 or [toll free] 1-866-448-4100.

The Town of Port Royal's Responsibilities in Responding to Your Request

- Town officials or staff must respond to your request for records 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 state holidays.
- The reason for wanting the records is irrelevant; a request does not have to state the reason why a requester wants the records before the Town responds to a request. Knowing the intended use of the records, however, can sometimes make it easier for Town officials to identify requested records.
- FOIA does, however, allow the Town to require requesters to provide their name and legal address.
- FOIA requires the Town to make one of the following responses to requests within the five-day time period:
 - 1) The Town provides the records that have been requested in their entirety.
 - 2) The Town withholds all of the requested records because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the Town must send a response in writing. That writing must identify and state the specific section of the Code of Virginia that allows the withholding of the records.
 - 3) The Town provides some of the requested records but withholds other records. The Town cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the Town may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. The Town must provide a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld and estimate the volume of records the Town is withholding under the applicable section.
 - 4) The Town informs you in writing that the requested records cannot be found or do not exist (we do not have the records requested). However, if it is known that another public body has the requested records, the Town will include contact information for the other public body in the response to you. If it is practically impossible for the Town 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 seven additional working days to respond, giving the Town a total of twelve working days to respond to a request.

- If a citizen requests a very large number of records, and the Town determines that it cannot provide the records within twelve working days without disrupting our other organizational responsibilities, the Town may petition the court for additional time to respond to the request. However, FOIA requires that the Town make a reasonable effort to reach an agreement with the requester about when the records may be produced before the Town may go to court to ask for more time.

Costs

- FOIA allows the Town to make reasonable charges for accessing, duplicating, supplying, or searching for requested records. FOIA allows the Town to charge for the actual costs of responding to FOIA requests. This includes staff time spent searching for requested records, copying costs, and any other costs directly related to supplying the requested records. Any charge for making copies may not exceed the Town's actual cost of duplication. The Town cannot include general overhead costs or other extraneous charges.
- If requested, the Town will estimate the charges for supplying requested records, as set forth in subsection F of § 2.2-3704 of the Code of Virginia. If it is estimated that it will cost more than \$200 to respond to a request, the Town may require a deposit, not to exceed the amount of the estimate, before proceeding with the request. The five days that the Town has to respond to a request does not include the time between when a deposit is requested and when it is provided.
- If requested, the Town will estimate in advance the charges for supplying the requested records. Requesters will then know about any costs up front, and afford the opportunity to modify a request to reduce costs, if desired.
- If the Town is owed money from a previous FOIA request that has remained unpaid for more than 30 days, the Town may require payment of the past-due bill before it will respond to any new FOIA request from the delinquent requester.

Types of records

The following is a general description of the types of records held by the Town:

- Agendas and minutes of meetings of the Town Council, Planning Commission and other public bodies of the Town.
- Staff reports, analyses and recommendations about proposals being made to such bodies
- Salary and expense records and other personnel records concerning employees and officials of the Town.

- Records of the Town's contracts with other public bodies, or with private individuals or firms providing goods and services to the Town.
- Budgets, reports on Town income and expenditures, audited financial statements and other records relating to the Town's financial positions.

If it is unknown if the Town has the record(s) sought, please contact Ms. Harrison at the e-mail address or phone number shown above.

Commonly used exemptions and policy regarding their use

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Town generally does withhold records under the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia), except for the job title, salary, and expense reimbursements
- Records that are 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))
- Medical and social services records
- Records relating to the negotiation and award of a contract, before a contract has been awarded (§ 2.2-3705.1 (12))