

The Virginia Freedom of Information Act Rights & Responsibilities

It is the policy of the Virginia Department of Corrections (VADOC) to make public records available in accordance with the Virginia Freedom of Information Act (FOIA). The Freedom of Information Act, § 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. Persons incarcerated in state, federal or local correctional facilities are not afforded any rights under FOIA (§ 2.2-3703 (C)). The VADOC has policies that govern what records incarcerated offenders may access.

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.

As set forth in § 2.2-3700 of the *Code of Virginia*, 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.

Making a Request for Records from the Virginia Department of Corrections

- 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, written requests are preferred. It can 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. Nevertheless, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- The reason for your request for public records is irrelevant, and we cannot ask you why you want the records. FOIA does, however, allow us to ask you for your name and legal address. The VADOC requires that you provide your name and legal address with your request.

- 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 a situation where you are asking general questions about the work of the VADOC. In addition, we are not required to create a new record if the record does not already exist.
- You may choose to receive electronic records in any format used by the VADOC 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 the Virginia Department of Corrections, you should direct your request to the Manager of the Unit, the Warden or Superintendent of the facility, or the Chief of the Probation and Parole District that maintains the records you are requesting.

Requests for copies of the Department's policies and procedures should be addressed to:

Policy and Initiatives Unit
 Virginia Department of Corrections
 P.O. Box 23963
 Richmond, Virginia 23261
 Phone: (804) 887-8215
 Fax: (804) 674-3017

To Contact the Policy & Initiatives Unit via the Department's website, click on "DOC Mail" on the "Contact Us" page: <http://www.vadoc.virginia.gov/contact.shtm>
 E-mail: PolicyInitiatives@vadoc.virginia.gov

For other types of records, you can find information about the key Divisions and Units of the Department of Corrections on the Department's website in the Agency Directory at <http://www.vadoc.virginia.gov/about/directory/default.shtm>. The mailing address and main phone number for all Central Office (Headquarters) Units is:

Virginia Department of Corrections
 P. O. Box 26963
 Richmond, Virginia 23261
 Phone: (804) 674-3000

To Contact a Central Office Unit via the Department's website, click on "DOC Mail" on the "Contact Us" page: <http://www.vadoc.virginia.gov/contact.shtm>
 E-mail: DOCMail@vadoc.virginia.gov

Contact information for regional offices, correctional facilities, probation and parole offices and community corrections facilities can be found through the links for each Division in the Agency Directory at <http://www.vadoc.virginia.gov/about/directory/default.shtm>.

Note regarding records of the Virginia Parole Board:

The Virginia Parole Board is a separate state agency from the Department of Corrections. If the records you are requesting are Parole Board records, you should direct your request to:

The Virginia Parole Board
6900 Atmore Drive
Richmond, Virginia 23225
Phone: (804) 674-3081

If you have questions concerning making a request for records, or if you do not know to whom you should direct your request, you may contact Ryan McCord, Legal Issues Coordinator, at:

Ryan McCord
Virginia Department of Corrections
P.O. Box 26963
Richmond, Virginia 23261
Phone: (804) 887-8340
Fax: (804) 674-3509
E-mail: FOIA@vadoc.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@dls.virginia.gov, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Virginia Department of Corrections' Responsibilities in Responding to Your Request

- The Department must respond to your request within five working days of receiving it. "Day One" is considered the first work day after your request is received. The five-day period does not include weekends or holidays.
- FOIA requires that public bodies 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 specific statutory exemption(s). If all of the records are being withheld, we must send you a response in writing. That response must identify the volume and subject matter of the records being withheld, and state the specific section(s) 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(s) 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 that 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 us 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 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 and retrieving 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 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 §2.2-2704 of the *Code of Virginia*.
- You may have to pay for the records that you request from the Virginia Department of Corrections. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items such as staff time spent searching for and retrieving the requested records, copying costs, postage and any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we will require that you pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The time period within which we must respond to your request does not include the time between when we ask you for a deposit and when we receive the deposit.
- 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. We strongly recommend that you request an estimate of the cost if you are not familiar with the volume of the records that you are requesting and/or are not able or willing to pay charges of up to \$200 for the records.
- If not paid in advance, payment is due upon receipt of the records. A new request for

records will not be processed until you pay any amount that you owe for a previous records request that has remained unpaid for more than 30 days.

Types of Records

The following is a general description of the types of records held by the Virginia Department of Corrections:

- Personnel records concerning employees and officials of the Department.
- Records of contracts that the Department has entered into.
- Inventories, financial and budget records.
- Department and local operating procedures, regulations and manuals.
- Offender criminal, case management and medical records.
- Security protocols, tactical plans, check sheets, logs, rosters, post orders, inventories, recordings and other security records.
- Investigative reports, audits and inspections.
- Statistical and management reports.
- Engineering and construction records.

If you are unsure whether the Virginia Department of Corrections has the record(s) you seek, please contact the appropriate unit or facility or the FOIA Coordinator. Contact information is listed on pages 2-3 under “Making a Request for Records.”

Commonly Used Exemptions

The *Code of Virginia* allows any public body to withhold certain records from public disclosure. The Virginia Department of Corrections commonly withholds records subject to the following exemptions:

- 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 or legal work product (§ 2.2-3705.1 (3))
- Vendor proprietary information software (§ 2.2-3705.1 (6)) or agency software (§ 2.2-3705.1 (7))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))

- Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, staff meeting minutes or other records, the disclosure of which would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure (§ 2.2-3705.2 (6))
- Records of the Commitment Review Committee concerning individuals subject to civil commitment as sexually violent predators and records identifying the victims of such persons (§ 2.2-3705.2 (9))
- Medical and mental health records (§ 2.2-3705.5 (1); § 32.1-127.1:03)
- Confidential proprietary records related to a bid on a public construction project (§2.2-3705.6 (10)) or to a proposal under the Public-Private Education Facilities and Infrastructure Act (§ 2.2-3705.6 (11))
- The identities of persons designated to conduct an execution and any information reasonably calculated to lead to the identities of such persons (§ 2.2-3705.7 (26); §53.1-233)
- Records relating to a criminal investigation or prosecution (§ 2.2-3706 (A)(2)(a))
- Records submitted in confidence to agents of the Department's Special Investigations Unit (§ 2.2-3706 (A) (2)(b))
- Records of offenders incarcerated in correctional facilities (§ 2.2-3706 (A)(2)(d))
- Law enforcement records containing specific tactical plans, the disclosure of which would jeopardize the safety or security of law enforcement personnel or the general public (§ 2.2-3706(A)(2)(e))
- Records of adults under investigation or supervision by state probation and parole services (§ 2.2-3706 (A)(2)(f))
- Criminal history records (§ 19.2-389) and investigations and reports by probation officers (§ 19.2-299)

Policy Regarding the Virginia Department of Corrections' Use of Exemptions

- The general policy of the Department is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of the Department.
- The general policy of the Department is to invoke the offender records and medical records exemptions where they apply in order to protect the privacy of offenders and to comply with applicable laws governing the release of certain criminal and health records.
- The general policy of the Department is to invoke the contract negotiations exemption whenever it applies in order to protect the Department's bargaining position and negotiation strategy.

- It is the general policy of the Department to invoke exemptions regarding security records whenever they apply to protect the security of its facilities and operations, and the security and safety of staff, offenders and the community.
- It is the policy of the Department to invoke the exemptions concerning attorney-client communications and legal work product whenever they apply in order to protect the Department's legal interests and strategy.