

Administration-Operations Policy	Freedom of Information Act Records Production Policy and Procedures	Effective: 4/7/05
Policy No. 11		Revised: 7/24/06; 4/3/08, 4/14/10, 2/4/11

VIRGINIA DEPARTMENT OF VETERANS SERVICES
Freedom of Information Act Records Production
Policy and Procedure

11.1 Purpose

This purpose of this policy is to establish a procedure for the production of records and recovering direct costs associated with reproducing documents requested by non-governmental agencies and individuals under the provisions of the Virginia Freedom of Information Act (FOIA), Va. Code. §§ 2.2-3700, et. seq.; and to promote an increased awareness by all persons of DVS activities.

11.2 Application

The Commissioner, through the FOIA Responsible Officer, is responsible for the application of this policy.

11.3 Interpretation

The Commissioner is responsible for the interpretation of this policy.

11.4 References

This policy was developed in accordance with the guidelines established by the Virginia Freedom of Information Advisory Council. This policy supersedes the former DVS Policy No. 1-07, and the former DVS Policy 1-07 is hereby rescinded.

11.5 Policy

It is the policy of DVS to ensure that all public records disclosable under FOIA are made available to the public upon request, subject to the procedures outlined in this policy. It also is the policy of DVS to comply with the provisions of FOIA which require that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

11.6 Definitions

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.

11.7 Rights and Responsibilities Under FOIA

Rights and responsibilities with respect to disclosure of information and document production charges, contained in Appendices A and B to this policy, shall be posted on the DVS Web site and available to the public upon request, in paper format, in all DVS offices and facilities.

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11.8 Records Disclosure

Records shall be disclosed as outlined in Appendix A of this policy.

11.9 Records Production Charges

DVS Finance staff shall, on or before July 1 of each year, establish an appropriate charge for recovering direct costs for searching, copying and mailing records to non-governmental agencies, using the rate schedule worksheet in Appendix B of this policy.

Records production charges shall not exceed actual costs incurred in accessing, duplicating, supplying or searching for the requested records. Copier charges shall be computed based on the actual expense incurred for toner, paper and equipment costs. Staff time shall be computed at the hourly rate of the employee performing the function. Postage expenses shall be computed using the prevailing rates established by the United States Postal Service.

A billing statement of production costs, contained in Appendix C to this policy, shall accompany all records produced in response to FOIA requests, if charges apply.

11.10 Sample Response Letters

The sample response letters contained in Appendices D, E, F and G to this policy shall be used in preparing responses to requests for records that are exempt; records that will be provided in part and redacted in part; for notification of extension of response time; and for records that do not exist or may be in the possession of another public body.

11.11 Boards/Councils/Committees Procedures

- A. Notices of all meetings of DVS boards/councils/committees, consisting of three or more members, shall be posted on the Commonwealth Calendar and the DVS web site at least three (3) days prior to the date of the meeting. The notices shall include:
1. The date, time, location and specific meeting site;
 2. Whether any members will participate through electronic means, and the names of those members;
 3. Meeting agenda;
 4. Whether public comment will be received and, if so, approximately the time(s) the public comment will be heard;

A paper notice and meeting agenda shall be posted at the entrance of the Commissioner's Office, as well as at the entrance of the meeting site.

- B. Meeting minutes shall be recorded for all meetings of DVS boards/councils/committees, consisting of three or more members. Draft minutes shall be posted to the Commonwealth Calendar and the DVS web site no later than ten (10) business days

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following the date of the meeting; and final minutes shall be posted no later than three (3) business days following the date of their approval. Meeting minutes shall include, but are not limited to:

1. The date, time, and location of the meeting;
2. The members of the public body recorded as present and absent; and
3. A summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.

C. For electronic communication meetings conducted in accordance with Va. Code § 2.2-3708, minutes shall include:

1. The identity of the members of the public body at each remote location identified in the notice, who participated in the meeting through electronic communications means;
2. The identity of the members of the public body who were physically assembled at the primary or central meeting location; and
3. The identity of the members of the public body who were not present at the locations identified in Sections 11.9.C.1 and 11.9.C.2 of this policy, but who monitored such meeting through electronic communications means.

11.12 DVS FOIA Responsible Officer

The Commissioner shall appoint a FOIA Responsible Officer and Assistant FOIA Responsible Officer to manage the DVS FOIA program and respond to FOIA requests.

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Appendix A

VIRGINIA DEPARTMENT OF VETERANS SERVICES

Rights of Requestors and Responsibilities of DVS Under the Virginia Freedom of Information Act

Your FOIA Rights

- A. You have the right to request to inspect or receive copies of public records, or both.
- B. You have the right to request that any charges for the requested records be estimated in advance.
- C. 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 DVS

- A. 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 the Department of Veterans Services (DVS) a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, DVS cannot refuse to respond to your FOIA request if you elect to not put it in writing.

- B. 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 DVS can identify and locate the records that you are seeking.
- C. 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 DVS, nor does it require DVS to create a record that does not exist.
- D. You may choose to receive electronic records in any format used by DVS in the regular course of business.

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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

- E. If DVS 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 DVS may need to discuss your request with you to ensure that it understands what records you are seeking.

To request records from DVS, or ask questions about DVS records, please contact the DVS FOIA Responsible Officer, Danielle Weaver, Administrative Assistant, at:

Virginia Department of Veterans Services
900 East Main Street, 6th Floor, West Wing
Richmond, Virginia 23219
(804) 786-0286 (Voice)
(804) 786-0302 (Fax)
Danielle.Weaver@dvs.virginia.gov

The Freedom of Information Advisory Council also 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 (866) 448-4100 (toll-free).

Responsibilities of DVS in Responding to Your Request

- A. DVS must respond to your request within five business 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.
- B. The reason behind your request for public records from DVS is irrelevant, and you do not have to state why you want the records before DVS responds to your request. FOIA does, however, allow DVS to ask you to provide your name and legal address.
- C. FOIA requires that DVS make one of the following responses to your request within the five-day time period:
 1. DVS provides you with the records that you have requested in their entirety.
 2. DVS withholds 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, DVS 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.

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3. DVS provides some of the records that you have requested, but withholds other records. DVS cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, DVS may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. DVS 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. DVS informs you in writing that the requested records cannot be found or do not exist (DVS does not have the records you want). If DVS knows that another public body may have the requested records, DVS must state this in the request and include contact information for the other public body in its response to you.
5. If it is practically impossible for DVS to respond to your request within the five-day period, DVS must state this in writing, explaining the conditions that make the response impossible. This will allow DVS seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.

D. If you make a request for a very large number of records, and DVS believes that it cannot provide the records to you within 12 working days without disrupting its other organizational responsibilities, DVS may petition the court for additional time to respond to your request. However, FOIA requires that DVS make a reasonable effort to reach an agreement with you concerning the production of the records before it goes to court to ask for more time.

Costs

- A. You may have to pay for the records that you request from DVS. FOIA allows DVS 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.
- B. If the total charge is in an amount of \$50 or less, the requestor will not be charged. If DVS estimates that it will cost \$200 or more to respond to your request, DVS may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that DVS has to respond to your request does not include the time between when DVS asks for a deposit and when you respond.
- C. You may request that DVS estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs in advance, or give you the opportunity to modify your request in an attempt to lower the estimated costs.

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- D. If you owe DVS money from a previous FOIA request that has remained unpaid for more than 30 days, DVS may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly Used Exemptions

State law allows public bodies to withhold certain records from public disclosure. DVS commonly withholds records subject to the following exemptions:

- A. Personnel records (Va. Code § 2.2-3705.1(1)).
- B. Records subject to attorney-client privilege (Va. Code § 2.2-3705.1 (2)); or attorney work product (Va. Code § 2.2-3705.1 (3)).
- C. Vendor proprietary information (Va. Code § 2.2-3705.1 (6)).
- D. Records relating to the negotiation and award of a contract, prior to a contract being awarded (Va. Code § 2.2-3705.1 (12)).

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Appendix B

VIRGINIA DEPARTMENT OF VETERANS SERVICES Document Production Rates Schedule Effective July 1, 2007

Part I – Photocopying

Copier paper, toner and equipment charge, per sheet \$.15

Part II – Postage

U. S. Postal Service First-Class rate, letters and cards (1st oz.) \$.44

U. S. Postal Service Flat rate, large envelopes and letters over 1/4” thick, (1st oz.) .80

U. S. Postal Service Parcel rate, letter, large envelope or package over 3/4” thick (1st oz.) 1.13

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Appendix D

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Sample Letter – All Requested Documents are Exempt

[DVS Letterhead Stationery]

[Date]

[Name Requesting Individual]
 [Name of Organization]
 [Address]
 [City, State Zip]

Dear _____:

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700, et. seq.). You have requested records relating to [description of records sought]. This office has [describe with reasonable particularity the volume or amount of records being withheld; i.e., 10 pages of records, over 1000 pages of records, a large database, etc.] responsive to your request. Please be advised, however, that these records are exempt from disclosure under [cite specific provision in Va. Code § 2.2-3705 or other applicable Virginia statute] and, therefore, will not be released.

Thank you for your inquiry.

Sincerely,

[Name of Responder]
 [Title of Responder]

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Appendix E

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Sample Letter – Records Will be Provided in Part and Redacted in Part

[DVS Letterhead Stationery]

[Date]

[Name Requesting Individual]

[Name of Organization]

[Address]

[City, State Zip]

Dear _____:

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700, et. seq.). Please be advised that portions of the records you have requested relating to [describe the exempt portions, generally] are exempt from disclosure under [cite specific provision in Va. Code § 2.2-3705, or other applicable Virginia statute]. Therefore, these portions have been redacted from the records being released to you.

Thank you for your inquiry.

Sincerely,

[Name of Responder]

[Title of Responder]

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Appendix F

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Sample Letter – Extension of Response Time

[DVS Letterhead Stationery]

[Date]

[Name Requesting Individual]
 [Name of Organization]
 [Address]
 [City, State Zip]

Dear _____:

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700, et. seq.). Please be advised that it is practically impossible to provide the requested records, or determine whether they are available, within the five working days required by FOIA because [specify the conditions that make a five-day response impossible; i.e. voluminous request, insufficient staff this week, etc.]. Therefore, we are invoking Subsection B 4 of Va. Code § 2.2-3704 to provide us with seven additional working days to respond to your request.

Thank you for your inquiry.

Sincerely,

[Name of Responder]
 [Title of Responder]

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Appendix G

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Sample Letter – Records Cannot be Found or do not Exist

[DVS Letterhead Stationery]

[Date]

[Name Requesting Individual]
 [Name of Organization]
 [Address]
 [City, State Zip]

Dear _____:

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700, *et seq.*). You have requested records relating to [describe the records sought]. This office has no records responsive to your request. [Explain the circumstances; e.g., the records do not exist because they were never created by the public body; the records do not exist because they were destroyed according to the retention schedule under the Virginia Public Records Act; the records were destroyed in a flood or fire; the records cannot be found, etc.] [If another public body is known to have the requested records, add: “You may wish to contact [name of contact person] at [name of the public body that has the records].” [He/she] may be reached at [telephone number, e-mail address, or other contact information.]]

[Insert contact information of entity which may possess the records]

Thank you for your inquiry.

Sincerely,

[Name of Responder]

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[Title of Responder]