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	<b>Subject:</b> FOIA POLICY	<b>No:</b> 20/22-OEM/CA-XXX-1	Supersedes: <b>N/A</b> Dated: <b>December 1, 2016</b>

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## 100 INTRODUCTION

### 100.1 PURPOSE

Prince William County Government, as a public body subject to the provisions set forth in the Virginia Freedom of Information Act, Virginia Code Section 2.2-3700 *et seq.* (FOIA), shall make all public records accessible in compliance with FOIA to Virginia citizens, representatives of newspapers and magazines with circulation in Virginia, and representatives of radio and television stations broadcasting in or into Virginia (collectively, Virginia media). This policy articulates the requirements of County employees with regard to requests for public records under FOIA by Virginia citizens and Virginia media.

### 100.2 SCOPE

- 100.2.1 This policy articulates the procedures County departments and employees must follow when Virginia citizens and Virginia media request public records.
- 100.2.2 Only existing public records are subject to disclosure.<sup>1</sup> Neither this policy nor FOIA require that new public records be created.


### 100.3 AUTHORIZATION

The County Executive's Office, in coordination with the County Attorney's Office, is responsible for overseeing the County's practices and procedures related to compliance with FOIA are followed.

### 100.4 APPLICABILITY

- 100.4.1 This policy applies to all County government departments, agencies, employees, volunteers, and vendors/contractors who are the custodian of or in possession of any County public record including, but not limited to, County-supported State employees.
- 100.4.2 This policy is supplementary to, and shall be interpreted consistent with, FOIA.
- 100.4.3 Per Board Resolution R16-558 (adopted on June 21, 2016), which amended the Board of County Supervisors' Rules of Procedure, "[a]s a policy matter, elected officials will not be treated any different from any other citizen when the County charges the reasonable and actual cost incurred by the County for responses to request for public records pursuant to the Virginia Freedom of Information Act (FOIA); [and] 'Elected officials' includes, but is not limited to, members of the Board of County Supervisors . . . ."
- 100.4.4 This policy does not apply to members of the Board of County Supervisors who request a public record(s) in their capacity as Board members. For example, this policy does not apply to Board of County Supervisors' directives.
- 100.4.5 If County staff provides a Board member or their staff with a public record which has not been reviewed for potential exemptions under FOIA, the staff member

<sup>1</sup> County employees are also responsible for complying with the Virginia Public Records Act, Virginia Code § 42.1-76 *et seq.*, and applicable Library of Virginia records retention and disposition general schedules. The Virginia Public Records Act addresses the retention and disposition of County public records (including, but not limited to, emails), and is distinct from FOIA, which addresses access to public records.

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shall note this on the public record or as part of the transmission of the public record. *Cross-reference* Section 300.2.7 of this policy.

### 100.5 RESPONSIBILITY


- 100.5.1 The County Attorney's Office shall provide legal counsel regarding FOIA requests. The County Attorney shall designate an employee(s) in the County Attorney's Office as the County's FOIA Officer(s).
- 100.5.2 The County Attorney's Office is responsible for training County staff on the proper application of FOIA.
- 100.5.3 Department directors are responsible for designating one or more FOIA Liaisons, who are required to attend all FOIA training and shall be the point of contact for FOIA requests directed to the department they represent. Department directors are responsible for ensuring that a FOIA Liaison is available during all regular County business hours. Department directors are responsible for establishing and implementing appropriate procedures to ensure that if the department's regular FOIA Liaison(s) is absent during regular County business hours, FOIA requests are still addressed and processed in accordance with this policy and in compliance with FOIA (ex. FOIA requests emailed to the FOIA Liaison while the Liaison is out of the office). If a department director does not appoint a FOIA Liaison or a department's FOIA Liaison(s) is not available during regular County business hours, the director shall serve as that department's FOIA Liaison until the director appoints a FOIA Liaison or the FOIA Liaison is available.
- 100.5.4 Each department director is responsible for ensuring that all FOIA requests to their department are managed appropriately in accordance with this policy and in compliance with FOIA.
- 100.5.5 Each department director shall establish and implement procedures regarding who within their department is authorized to lawfully withhold a public record (in whole or in part) under FOIA, in consultation with the FOIA Officer.
- 100.5.6 Each department director may establish policies, procedures, and practices for their department to implement this Policy and address FOIA requests provided that any such policy, procedure, and practice is consistent with FOIA and this Policy.

### 100.6 EXCEPTIONS

The County Executive, with counsel from the County Attorney, must approve all exceptions to this policy. Any request for an exception must be in writing with justification and supporting documentation provided.

### 100.7 DEFINITIONS

- 100.7.1 **Business Day:** Any day where general County government offices are open for business (Monday – Friday, 8:30 a.m. to 5 p.m. excluding holidays and announced government closures).
- 100.7.2 **FOIA:** Refers to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*

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- 100.7.3 **FOIA Liaison:** The individual(s) designated by their department director to ensure that proper FOIA policy and protocols are administered within their respective department. The FOIA Liaison also serves as a point-of-contact for the general public and County Attorney's Office with regard to FOIA requests for their department.
- 100.7.4 **FOIA Officer:** The individual(s) designated by the County Attorney to serve as a point of contact for members of the general public in requesting public records and to coordinate the County's compliance with FOIA.
- 100.7.5 **Information:** Content within a public record that references a specifically identified subject matter and shall not be interpreted to require the production of information that is not embodied in a public record.
- 100.7.6 **Public Record:** 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 records are presumed to be open and may only be withheld if a specific statutory exemption applies. Records that are not prepared for or used in the transaction of public business are not public records.
- 100.7.7 **Request for Public Record:** Any inquiry for a public record(s), whether verbally or in writing. The requester does not have to use the term "FOIA" or invoke any law when making a request for public record.

## 200 FOIA POLICY

**200.1 REQUEST**– Whether verbally or in writing, all requests should be directed to the applicable FOIA Liaison or the FOIA Officer. If a request is made to a County employee who is not the FOIA Liaison for the department that is the custodian of the requested public record, that employee shall forward the request in writing to the appropriate FOIA Liaison or the FOIA Officer.

200.1.1 Requests for public records must be made with reasonable specificity, so that the appropriate public records can be located.<sup>2</sup> If the FOIA Liaison is unable to obtain sufficient reasonable specificity regarding the request, he/she will forward the request to the FOIA Officer, who will contact the requester and manage the FOIA request.


200.1.2 There is no limit to the volume or number of public records that one may request, subject to Section 200.3 of this policy.

### 200.2 ACKNOWLEDGEMENT OF FOIA REQUEST

County staff should acknowledge and confirm to the requester, verbally or in writing, the receipt and scope of the FOIA request.

**200.3 COST** - As permitted under FOIA, the County may charge for its reasonable actual costs in

<sup>2</sup> Virginia Code § 2.203704(B).

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responding to a FOIA request.<sup>3</sup>

200.3.1 The County will not charge a requester when the estimated or actual total cost is \$50.00 or less.<sup>4</sup>

200.3.2 Requesters will be charged based on the following criteria:

200.3.2.1 Labor - The labor cost of responding to a FOIA request must be the reasonable and actual costs based on the most cost-effective staff member who is permitted to, and capable of, responding to the request.

Administrative staff - Requests that require 30 minutes or more of administrative staff time to process are charged the staff member's hourly rate for the time required to respond to the request.

Non-administrative staff - Requests requiring non-administrative staff time are charged the hourly rate of the staff member(s) required to respond to the request.

200.3.2.2 Printing/Copying - The cost of printing/copying is \$0.08 per page for black and white pages or \$.10 per page for color pages.

200.3.2.3 Redaction - The hourly rate for staff time spent to lawfully redact information as permitted under FOIA.

200.3.2.4 Postage - If the requesting party desires records to be shipped or mailed, the reasonable actual cost of the postage.

200.3.2.5 Legal Review - If the request requires legal review to assure that the records are responsive, are not exempt from disclosure, and may be disclosed without violating any other provision of law, and records are withheld as a result of the legal review, the actual cost of the legal exclusion review is charged to the requester.

200.3.2.6 Department Fee Schedule - If a department has an adopted/approved fee schedule which addresses fees applicable to this policy, the department shall charge its reasonable actual costs according to its fee schedule.

200.3.2.7 Miscellaneous - Any other reasonable actual costs incurred by the County in responding to a request.


200.3.3 County staff will provide a cost estimate, if one is requested.

200.3.4 If County staff determines that the cost to respond is greater than \$50, but less than \$200, staff will continue processing the FOIA request and notify the requester as soon as it makes that determination. Staff will then provide the requested public records to the requester along with a bill for the reasonable actual costs, which is due upon receipt.

200.3.5 If the estimated cost of supplying the public records exceeds \$200, the FOIA Liaison will immediately notify the FOIA Officer. The FOIA Officer or FOIA Liaison will then notify the requester and require a deposit of the full amount of the estimate prior to supplying the requested public records. All research and work

<sup>3</sup> Virginia Code § 2.203704(F).

<sup>4</sup> Virginia FOIA Advisory Council Opinion AO-06-09; FOIA Council, *Taking the Shock out of FOIA Charges: A Guide to Allowable Charges for Record Production Under the Freedom of Information Act*.


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related to the request will stop until requester (i) provides the required deposit, or (ii) narrows the scope of the request to the extent that a deposit is no longer required under this policy. If a requester provides the required deposit, County staff must respond to the requester as required under Section 200.4 of this policy and FOIA.

- 200.3.6 County staff will make its best good faith effort to accurately estimate the cost. However, if the reasonable actual cost exceeds the amount of the deposit, the requester shall be responsible, and will be billed, for any additional cost above the deposit amount. If the amount of the deposit is greater than the County's reasonable actual costs, the County will promptly refund the requester the difference.
- 200.3.7 Before processing a request for records, the County may require the requester to pay any amounts owed to the County for previous requests for public records that remain unpaid 30 days or more after billing. The FOIA Officer shall create and maintain a list of persons having unpaid FOIA requests charges, which shall be provided to all FOIA Liaisons and made available to County staff upon request.

**200.4 RESPONSE** – County staff must initially respond to a request for public records within five business days of receipt of the request. Day one is considered the first business day after the request is received by the County. All responses must be provided in writing. If applicable, the response must properly cite and include the applicable Virginia Code citation for any exemption(s) which is invoked. Before invoking any exemption(s), the FOIA Liaison must consult with the FOIA Officer to ensure the exemption(s) is permitted under FOIA or required by other applicable law and is properly cited. There are five possible responses to a FOIA request:

- 200.4.1 "The requested records are provided/attached." Include all responsive public records. County staff may, but is not required to, notify the FOIA Officer in the case of this response.
- 200.4.2 "The requested records could not be found or do not exist." County staff may, but is not required to, notify the FOIA Officer in the case of this response.
- 200.4.3 "The requested records are being entirely withheld." Provide appropriate FOIA citation authorizing the withholding of the responsive public record(s), and the approximate volume and subject matter of the withheld public record(s). County staff is required to promptly notify the FOIA Officer in the case of this response and consult with the FOIA Officer prior to issuing such response to the requester.
- 200.4.4 "The requested records are being withheld in whole or in part because Prince William County Government has exercised its discretion to withhold the records in accordance with VFOIA or applicable statute." Provide all responsive records not being withheld and include the appropriate FOIA citation authorizing the withholding of the responsive public record(s). County staff is required to promptly notify the FOIA Officer in the case of this response and consult with the FOIA Officer prior to issuing such response to the requester.
- 200.4.5 "It is not practically possible to provide the requested records within five working days, and Prince William County Government has invoked a seven working-day

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extension.” Per Virginia Code § 2.2-3704(B)(4), a notice of extension requires specifying the conditions that make a response within five working days impossible. This provides a total of no more than 12 working days after receipt of the request by the County to supply the requested public record(s). County staff is required to promptly notify the FOIA Officer in the case of this response. The FOIA Officer will contact the requester regarding the extension. See Section 300.2.4 of this policy.

200.4.6 Unless agreed to by the requester, all responses shall be made within the time required by FOIA.

200.4.7 If it is not possible to respond to a request within 12 business days and, after reasonable efforts, an agreement in writing cannot be finalized with the requester for additional time, the request shall be forwarded immediately to the FOIA Officer who will manage the FOIA request.

### **300 FOIA PROCESS AND ROLES**

#### **300.1 ALL COUNTY EMPLOYEES**

All County employees are responsible for being familiar with and complying with this policy and FOIA.

#### **300.2 FOIA LIAISON**

300.2.1 One or more FOIA Liaison(s) shall be designated by each department director to manage FOIA requests presented to the department as described in Section 200 of this policy. Each department director shall ensure that a FOIA Liaison is available at all times during regular County business hours.

300.2.2 The FOIA Liaison(s) shall attend all trainings and meetings, including an annual training, scheduled by the FOIA Officer.

300.2.3 The FOIA Liaison(s) shall familiarize him/herself with this policy, FOIA (available at <http://law.lis.virginia.gov/vacode/title2.2/chapter37/>), and the County’s FOIA Rights and Responsibilities (available at <http://www.pwcgov.org/government/courts/countyattorney/Pages/Freedom-of-Information-Act-as-of-July-1,-2016.aspx>).


300.2.4 The FOIA Liaison(s) shall notify the FOIA Officer of all FOIA requests where an extension of time to respond to the request is necessary. The FOIA Officer will then contact the requester regarding the extension.

300.2.5 The FOIA Liaison(s) shall notify the FOIA Officer if the request is unclear or needs further clarification for response.

300.2.6 All FOIA requests where costs will be charged shall be referred to the FOIA Officer, along with any outstanding balance.

300.2.7 If any County staff receives a request for a public record(s) from, on behalf of, or involving a member of the Board of County Supervisors or their staff, that employee shall immediately notify the FOIA Officer who will then notify the applicable Board member, their chief of staff, and the County Executive.

300.2.8 The FOIA Liaison shall notify and consult with the FOIA Officer prior to withholding

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any public record (in whole or in part).

### 300.3 FOIA OFFICER

- 300.3.1 The FOIA Officer(s) shall be an employee of the County Attorney's Office and designated by the County Attorney. The County Attorney shall ensure that a FOIA Officer is available during all regular County business hours.
- 300.3.2 The FOIA Officer(s) is responsible for managing FOIA requests which are referred to him/her.
- 300.3.3 The FOIA Officer(s) shall be responsible for managing and coordinating any required and appropriate FOIA training.
- 300.3.4 The FOIA Officer(s) shall serve as a point of contact for the general public regarding FOIA requests.
- 300.3.5 The FOIA Officer(s) will be responsible for overseeing and ensuring the billing of a requester for the costs of responding to FOIA requests, and ensuring that an accounting of all unpaid FOIA invoices is maintained.
- 300.3.6 The FOIA Officer(s) shall maintain a record of all FOIA requests which are referred to the FOIA Officer(s).
- 300.3.7 The FOIA Officer(s) shall communicate with all requesters whose requests are referred to him/her regarding the charging of reasonable actual costs, extensions of time, and withholding of any public record (in whole or in part).

### 300.4 OFFICE OF EXECUTIVE MANAGEMENT COMMUNICATIONS OFFICE

The Office of Executive Management Communications Office shall be responsible for responding to all requests from Virginia media for public records. Any County staff member who receives a request from Virginia media shall immediately forward the request to the FOIA Officer, the Director of Communications, and the FOIA Liaison for the Communications Office.

## 400 DISCLOSURE OF PUBLIC RECORDS PURSUANT TO A FOIA REQUEST


### 400.1 FORMAT

Public records will be provided in the format specified by the requester where feasible, and may be made in paper or electronic form. To minimize the cost to the requester and maximize staff efficiency, where appropriate and if agreeable to the requester, County staff should provide requested public records in an electronic format (ex. PDF, via DropBox).

### 400.2 WITHHOLDING PUBLIC RECORDS (IN WHOLE OR IN PART)

- 400.2.1 Records may only be withheld (in whole or in part) as required by law or as permitted by FOIA at the discretion of the custodian of the public record(s).
- 400.2.2 Since exemptions exist in order to protect some compelling public interest (such as privacy of individuals, criminal investigations, or the County's bargaining position in an on-going negotiation or discussion), it is inevitable that the County will need to rely on exemptions in many cases. For that reason, it is the County's general practice to invoke all exemptions that are applicable to any request for a public



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record(s). This practice ensures that the County treats all citizens the same way to the greatest extent possible.

- 400.2.3 Each department director shall establish and implement procedures regarding who within their department is authorized to lawfully withhold a public record (in whole or in part) under FOIA, in consultation with the FOIA Officer.
- 400.2.4 If a department believes that a public record may be lawfully withheld (in whole or in part) from disclosure under FOIA, the FOIA Liaison for that department shall contact and consult with the FOIA Officer. The FOIA Liaison or other designated individual within that department will then determine what information will be withheld prior to disclosure of a public record(s).
- 400.2.5 The County commonly withholds records subject to the following exemptions. If one of these exemptions applies to a received request, the FOIA Liaison must contact the FOIA Officer before responding to the requester.
- Personnel records;
  - Records subject to attorney-client privilege or attorney work product;
  - Vendor proprietary information;
  - Records relating to the negotiation and award of a contract, prior to a contract being awarded;
  - Records of criminal investigations;
  - Tax records;
  - Health records;
  - Appraisals and cost estimates of real property subject to a proposed sale, purchase, or lease;
  - Social service records; and
  - Records requested by individuals who are not citizens of Virginia or representatives of the media.

The above list of exemptions is only a list of some of the exemptions which are commonly used by the County; it is not an exhaustive list of all exemptions which may apply under FOIA. Staff should contact their department's FOIA Liaison and the FOIA Officer regarding the applicability, and prior to the use of, any exemption(s).

Approved By:





Christopher E. Martino  
 County Executive

Date