

Freedom of Information Act (FOIA)

(This statement of Rights and Responsibilities is made by the Virginia Department of Agriculture and Consumer Services on behalf of itself and all public bodies within the Department that are subject to the requirement contained in Section 2.2-3704.1 of the Code of Virginia pertaining to making available, and to posting, a notice of rights and responsibilities with regard to the Virginia Freedom of Information Act.)

The Virginia Freedom of Information Act (FOIA), § 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 policy of FOIA states that 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.

Requesting Records from the Virginia Department Agriculture and Consumer Services (VDACS)

- You may request records by U.S. mail, fax, e-mail, in person or over the telephone. 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 us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect not to put it in writing.

- Your request must identify the records you are seeking with "reasonable specificity." 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 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 VDACS, nor does it require VDACS to create a record that does not exist.
- You may choose to receive electronic records in any format used by VDACS in the regular course of business. For example, if you are requesting records maintained in a database or spreadsheet, 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 Department, you should direct your request, as follows:
For records of the Commissioner's Office, contact:**

Sandra J. Adams, Deputy Commissioner
P. O. Box 1163
Richmond, VA 23218
sandy.adams@vdacs.virginia.gov
Tel. (804) 786-3501
Fax (804) 371-2945

For records of the Division of Animal and Food Industry Services, contact:

Richard D. Saunders
P. O. Box 1163
Richmond, VA 23218
doug.saunders@vdacs.virginia.gov
Tel. (804) 692-0601
Fax (804) 371-2380

For records of the Division of Consumer Protection, contact:

Kay Wyatt
P. O. Box 1163
Richmond, VA 23218
kay.wyatt@vdacs.virginia.gov
Tel. (804) 786-3523
Fax (804) 371-7479

For records of the Division of Marketing, contact:

Melissa Ball
P. O. Box 1163
Richmond, VA 23218
melissa.ball@vdacs.virginia.gov
Tel. (804) 786-5448
Fax (804) 225-4434

For records of the Office of Administrative and Financial Services, including Emergency Services, contact:

Jennifer Cavedo
P. O. Box 1163
Richmond, VA 23218
jennifer.cavedo@vdacs.virginia.gov
Tel. (804) 786-3532
Fax (804) 371-8372

For records of the Office of Communications, contact:

Elaine J. Lidholm
P. O. Box 1163
Richmond, VA 23218
elaine.lidholm@vdacs.virginia.gov
Tel. (804) 786-2373
Fax (804) 371-7679

For records of the Office of Human Resources, contact:

Linda Cole
P. O. Box 1163
Richmond, VA 23218
Linda.Cole@vdacs.virginia.gov
Tel. (804) 786-3531
Fax (804) 371-8879

For records of the Milk Commission, contact:

Rodney Phillips
P. O. Box 1163
Richmond, VA 23218
rodney.phillips@vdacs.virginia.gov
Tel. (804) 786-2013
Fax (804) 726-3779

For all other records, contact:

Roy Seward
P. O. Box 1163
Richmond, VA 23218
roy.seward@vdacs.virginia.gov
Tel. (804) 786-3538
Fax (804) 371-2945

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@leg.state.va.us, or by telephone at (804) 225-3056 or (toll free) at (866) 448-4100.

VDACS Responsibilities

- VDACS must respond to your request 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 holidays.

- The reason behind your request for public records from VDACS is irrelevant, and we cannot ask you why you want the records before we respond to your request. FOIA does, however, allow VDACS to ask you to provide your name and legal address.
- FOIA requires that VDACS 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 a specific statutory exemption. If all of the records are being withheld, we 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.
 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 of the Code of Virginia that allows portions of the requested records to be withheld.
 4. If it is practically impossible for VDACS 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

- You may have to pay for the records that you request from VDACS. FOIA allows us 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.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.

- 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 up front, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, VDACS may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly Used Exemptions

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

- § 3.2-103 requiring the Commissioner of Agriculture and Consumer Services to withhold the following records:
 - Schedules of work for regulatory inspection;
 - Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;
 - Reports of criminal violations made to the Department by persons outside the Department;
 - Records of active investigations until the investigations are closed;
 - Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records that are otherwise a matter of public record; and
 - Tax returns required by the agricultural commodity boards established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.
- § 2.2-3705.1 (1) relating to personnel records
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- § 2.2-4342 of the Code of Virginia (relating to records relating to procurement transactions)
- § 3.2-114 relating to records of consumer complaints maintained by the Administrator of Consumer Affairs, with specific reference to the business interests of any person, trade secrets, or the names of customers
- § 3.2-3908 relating to trade secrets and other information pursuant to the Virginia Pesticide Control Act.