



## Virginia Freedom of Information Act (FOIA) TOWN OF AMHERST Policy & Costs/Charges Schedule

### The Rights of Requesters and the Responsibilities of the Town of Amherst under the Virginia Freedom of Information Act

REQUESTOR PUBLIC COMMENT FORM

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FREEDOM OF INFORMATION REQUEST FORM

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VIRGINIA FOIA COUNCIL

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The Virginia Freedom of Information Act (FOIA), located in [§ 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.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.

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.

#### **Requestor's FOIA Rights**

- Citizens of the Commonwealth of Virginia and members of the media with circulation in the Commonwealth of Virginia have the right to request to inspect **or** receive copies of public records, or both.
- Requestors have the right to request that any charges for the requested records be estimated in advance.

Those who believe their FOIA rights have been willfully and knowingly violated may file a petition in district or circuit court to compel compliance with FOIA or may contact the [Virginia Freedom of Information Advisory Council](#) by phone at 804-698-1810 (866-448-4100), by fax at 804-698-1899, or by email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov).

#### **Making a Request for Records from Town of Amherst**

- Requestors must provide their name and legal address pursuant to § 2.2-3704(A).
- Records may be requested via e-mail, US Mail, fax, in person, online, or over the phone. FOIA does not require that requests be in writing or specifically state records are being requested under FOIA. From a practical perspective, it is helpful to the FOIA Officer and the requestor that requests be in writing. This gives the requestor a record of the request and gives the FOIA Officer a clear statement of what records are being requested, so there is no misunderstanding. Should you wish to put your request in writing, a copy of the Town's FOIA

Request Form can be found [here](#).

- Requests must identify the records being sought with "reasonable specificity." This is a common-sense standard and does not refer to or limit the volume or number of records requested. It merely requires the requestor to be specific enough for the FOIA Officer to identify and locate the desired records.
- Requests must be for existing public records. FOIA gives citizens a right to inspect or copy **public records**; it does not apply to general questions about the work of the Town, nor does it require the Town to create a record that does not exist.
- Electronic records may be requested in any format used by the Town in the regular course of business.
- Requestors must cooperate with staff's efforts to clarify the type of records being sought and attempt to reach a reasonable agreement about the time required to respond to a large request.

### **Point(s) of Contact for Requesting Records from Town of Amherst**

The Town of Amherst has designated a FOIA officer to receive and coordinate responses to requests for records addressed to departments and agencies of the Town:

- **Clerk to the Town Council – FOIA Officer**  
**Vicki K. Hunt**  
**Town of Amherst**  
**174 S. Main Street**  
**P. O. Box 280**  
**Amherst, VA 24521**  
**(B) 434-946-7885**  
**(Fax) 434-946-2087**

Requests for records pertaining to the agencies listed below should be directed to the Town's FOIA Officer.

- **Town of Amherst**
- **Amherst Police Department**

In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about how FOIA works. The Council was created in the legislative branch of the state government to issue opinions on the operation and application of FOIA, to publish educational materials, and to provide training about FOIA. However, please be aware that the Council is not a records repository and does not process requests on behalf of other public bodies, nor is the Council an investigative or enforcement agency. Email the FOIA Advisory Council, or contact them by phone at (804) 698-1810, or toll free at (866) 448-4100. Additionally, use the FOIA Advisory Council's [public comment form](#) to comment on the quality of assistance provided by the Town of Amherst.

### **Town Responsibilities in Responding to Your Request**

One of the responses below must be made to the requestor within five working days of receipt. "Day One" is considered the first working day after the request is received. The five-day period does not include weekends, holidays, or other days when Town offices are closed.

1. All records requested are provided in their entirety.
2. All records requested were omitted because all are subject to a specific statutory exemption. A written response identifying the volume and subject matter of the records being withheld and stating the specific section of the Code of Virginia allowing the records to be withheld must be provided.

3. Some records requested are provided but others are withheld. An entire record cannot be withheld if only a portion of it is subject to an exemption. In that instance, portions of some records may be redacted (blacked out). A written response stating the specific section of the Code of Virginia allowing portions of the records to be withheld must be provided.
  4. No records responsive to the request - the records requested cannot be found or do not exist. If it is known that another public body has the requested records, their contact information will be provided.
  5. It is practically impossible for the Town to respond to the request within the five working day period. A written response explaining the reason will be provided and the Town will receive an additional seven working days to respond to your request (a total of 12 working days).
- If a request for a very large number of records is made which the Town is unable to fulfill within 12 working days without disrupting other organizational responsibilities, the court can be petitioned for additional time to respond. **FOIA requires a reasonable effort to reach an agreement concerning the time frame for production of the records and the scope of records requested be made before petitioning the court.**

### Types of records

The following is a general description of the types of records held by the Town, some of which are publicly available on the Town website.

- General administrative records such as correspondence, meeting minutes, etc.
- Financial records.
- Records of contracts entered into by the Town.
- Zoning and subdivision records including permits and violations.

### Commonly Exempted Records

The Code of Virginia allows any public body to withhold certain records, or portions thereof, from public disclosure. The Town commonly withholds records subject to the following exemptions:

- Personnel records (§2.2-3705.1 (1))
- Records 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))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Certain Criminal Records (§2.2-3706.A(2))
- Proprietary and other information provided under promise of confidentiality by private business considering expanding or locating within the Commonwealth (§2.2-3705.6(3))
- General application to the public body (§2.2-3705.1)
- Records relating to public safety (§2.2-3705.2)
- Records relating to administrative investigations (§2.2-3705.3)
- Health and social services records (§2.2-3705.5)

The Code of Virginia provides a number of exemptions specific to certain types of records. These exemptions and exclusions are found, for the most part, in §§ 2.2- 3705.1 through 2.2-3706.1 of the Code. It is the general policy of the Town to invoke lawful exemptions from disclosure in matters involving protection of the privacy of individuals, protection of the interests or strategy of the Town in bargaining, negotiating, investigating, or prosecuting claims, and in matters involving public safety.

### **Charges to Produce Records - Costs/Charges Schedule**

Prior to submitting a request, you should be aware that you may have to pay for the records that you request from the Town of Amherst, as allowed by FOIA. 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.

- FOIA allows the Town to make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. 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 general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.
- Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and make an inquiry to requesters if they would like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection F of [§ 2.2-3704 of the Code of Virginia](#)
- If requested, the Town shall provide the requester with a cost estimate. The estimate is not a fixed amount. Actual costs may be greater or less than the estimated amount. In such a case, the Town will refund any overage paid or provide an invoice for additional payment which must be made within 30 days directly to the FOIA Officer. The period within which the Town shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the Town receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs incurred by the Town in estimating the cost of supplying the requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such requested records. § 2.2-3704(F)
- In any case where the Town determines in advance that charges for producing the requested records are likely to exceed \$200, the Town may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the Town shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester. § 2.2-3704(H)
- Pursuant to § 2.2-3704(I), before processing a request for records, the Town may require the requester to pay any amounts owed for previous requests for records that remain unpaid 30 days or more after billing.

**Staff Time** - costs for time spent accessing, duplicating, redacting, reformatting, supplying, or searching for the requested records:

Fees to produce FOIA requests are charged based on the time spent by the individual(s) compiling and redacting the document(s) and additional fees. The fee for time spent is calculated by the employee's hourly salary (the total of the annual pay rate for the individual by 2,080 hours) multiplied by the time of production (measured in 6 minute increments).

The Town will take all reasonable precautions to keep personnel time and costs to a minimum, including using lower

paid personnel capable of retrieving records to respond to a request. However, in situations where a particular individual is required to search through his/her own email and files contained on his/her individual Town computer or other device, it shall not be unreasonable for that individual to retrieve the requested records and charge a FOIA response fee corresponding to his/her salary. In some cases, it may be necessary for multiple personnel to participate in responding to a FOIA request.

- There is no charge for the first thirty minutes of staff time.

**Copying/Printing/Reproducing Records**

A schedule of the Town’s costs per page and material costs are outlined below. Copying costs shall only be assessed on public records that are printed, not on public records that are provided electronically to requesters. The Town may charge for the actual cost of the medium by which the information is provided (e.g., CD, DVD, flash drive, etc.).

| <b>Document Type</b>                | <b>Charge</b>  |
|-------------------------------------|--|
| Black and White copy                | \$0.08/page  |
| Color Copy                          | \$0.15/page  |
| DVD                                 | \$1.00/disc  |
| Flash Drive                         | \$8.00   |
| Larger documents, maps, plats, etc. | Actual cost the Town incurs to print them or have them printed |

**Payment of FOIA Fees**

The FOIA Officer will provide the requestor with a written invoice detailing the costs involved in fulfilling the request. All amounts shall be remitted within thirty (30) days directly to the FOIA Officer in cash or by check made payable to the Town of Amherst.