

The [Virginia Freedom of Information Act \(VFOIA\)](#), § 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 statutory exemption applies.

The purpose of VFOIA is to promote an increased awareness by all persons of governmental activities. In furtherance of this purpose, VFOIA 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 VFOIA 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 VFOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with VFOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

## Making a Request for Records from the Virginia529

- You may request records by U.S. mail, fax, email, in person, or over the phone. VFOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under VFOIA.

- 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 Virginia College Savings Plan (Virginia529) a clear statement of the records that you are requesting and serves to help avoid a potential misunderstanding regarding a verbal request. However, Virginia529 cannot refuse to respond to your VFOIA request if you do not put it in writing.
- 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 Virginia529 can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. VFOIA 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 Virginia529, nor does it require Virginia529 to create a record that does not exist.
- You may choose to receive electronic records in any format used by Virginia529 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 email 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 VFOIA request is not an adversarial process, but Virginia529 may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from Virginia529, you may direct your request to Chris McGee, General Counsel. He can be reached by email at [cmcgee@virginia529.com](mailto:cmcgee@virginia529.com), by telephone at 804-225-2681, or by mail at 9001 Arboretum Parkway, North Chesterfield,

Virginia 23236. You may also contact him with questions you have concerning requesting records from Virginia529. In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about VFOIA. The Council may be contacted by e-mail at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at 804-698-1810 or toll-free 1-866-448-4100.

## Virginia529's Responsibilities in Responding to Your Request

- Virginia529 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 Virginia529 is irrelevant, and you do not have to state why you want the records before we respond to your request. VFOIA does, however, allow Virginia529 to require you to provide your name and legal address.
- VFOIA requires that Virginia529 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 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. We inform you in writing that the requested records cannot be found or do not exist (we do not have the records 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 Virginia529 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 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, VFOIA requires that Virginia529 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 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 inquire of the requester whether he 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.

- You may have to pay for the records that you request from Virginia529. VFOIA allows us to charge for the actual costs of responding to VFOIA 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 VFOIA request that has remained unpaid for more than 30 days, Virginia529 may require payment of the past-due bill before it will respond to your new VFOIA request.

## Commonly Used Exemptions

The *Code of Virginia* allows any public body to withhold certain records from public disclosure. As a matter of policy, Virginia529 commonly withholds records subject to the following exemptions:

- Records subject to attorney-client privilege (§ 2.2-3705.1(2)) or attorney work product (§ 2.2-3705.1(3))

- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12))
- Records relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange (§ 2.2-3705.7(12)).
- Records of Virginia529 relating to the pursuit of particular investment strategies, or the selection or termination of investment managers, and trade secrets (§ 2.2-3705.7(24)).

## **Feedback on Assistance Provided in Response to a Request**

Anyone making a VFOIA request may provide feedback on the assistance provided by Virginia529 in response to the request. The VFOIA Council provides an online form on the [FOIA Council website](#).