

Written by MPPDC

FREEDOM OF INFORMATION ACT (FOIA) -RESPONDING TO PUBLIC INFORMATION REQUESTS MADE PURSUANT TO FOIA

Middle Peninsula Planning District Commission Administrative Policy

The Virginia Freedom of Information Act, § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and

representatives of the news 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 or other law applies to those records.

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.

For any request made pursuant to the Virginia Freedom of Information Act, a response is required within five working days. (The first workday of the request is considered the first working day after the request is received.) Prompt attention is critical.

FOIA Rights of Virginia Citizens and Certain Media Members

- 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. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for records from MPPDC

- 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 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 to 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 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 MPPDC nor does it require MPPDC to create a record that does not exist.
- You may choose to receive electronic records in any format used by MPPDC 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 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 MPPDC please direct your request to:

Lewis Lawrence, Executive Director, PO Box 286, Saluda VA 23149, 804 758-2311, llawrence@mppdc.com

In regards to charging fees for requested information:

- a. The Commission's policy is not to charge for minor document requests (small number of copies with little to no research required) and for records estimated to cost \$50 or less.
- b. The requester may be required to pay the actual costs of searching, accessing, duplicating and supplying the records for requests estimated to cost \$50 or more.
- c. For requests estimated to cost \$200 or more, a deposit may be required in advance not to exceed the amount of the advance determination (Virginia Code Section 2.2-3704 H), before the request will be processed. Staff shall notify the requester in writing of this requirement, within five working days of the request.
- d. If requested by the requester, all charges for searching, accessing, duplicating, and supplying the requested records shall be estimated in advance.
- e. Costs may be calculated at the actual cost, if known, or estimated as follows:
 - \$0.08 per page for B/W, \$0.10 per page for color copies
 - \$26.89/hour or the actual hourly rate for clerical staff time, for the actual costs of searching, accessing, duplicating, and supplying records (Clerical staff shall be used whenever possible, in order to keep costs at a minimum).
 - \$32.42/hour or the actual hourly rate for professional staff time, for the actual costs of searching, accessing, duplicating, and supplying records (Clerical staff shall be used whenever possible, in order to keep costs at a minimum).

These regulations apply to all (non-exempt) documents in their original or existing format. The Commission is not required to create or compile information that does not already exist, or to provide it in a format in which it does not already exist.

Exemptions shall be exercised (records shall be withheld) for certain documents such as medical and mental records, personnel and scholastic records, legal counsel, and security or emergency information such as vulnerability assessments or response plans. Exemptions may be exercised (records may be withheld) for other types of documents and records, in accordance with Virginia Code § 2.2-3705.1 (1-12), § 2.2-3705.2 (2-6), § 2.2-3705.4 (1) and § 2.2-3705.5 (1) and § 2.2-3705.6 (10).

Employees receiving such a request shall:

1. Refer the request immediately to the Executive Director. All FOIA requests must be responded to under the signature of the Executive Director. In his or her absence, MPPDC Finance Director may address the FOIA request to the best of his or her abilities.

2. Make one of the following responses, within five working days (Day one is considered the day after your request is received.) The 5 day period does not include weekends or holidays.
 - a. Provide all of the items requested immediately, if readily available, or provide the items within five working days of the request, if they can be made available within that time.

 - b. Provide some of the items requested and withhold other items. Consult with the Executive Director who will discuss with legal counsel prior to withholding any documents. Upon the Executive Director's approval and signature, respond to the requester in writing, within five working days of the request, citing the Virginia State Code section authorizing the withholding, and enclosing a copy of the Code section.

 - c. Withhold all of the items requested. Consult with the Executive Director prior to withholding any documents. Upon the Executive Director approval, respond to the requester in writing, within five working days of the request, citing the Virginia State Code section authorizing the withholding and enclosing a copy of the Code section.

 - d. If needed, invoke 7 additional working days. If the request cannot be reasonably met within five working days, respond to the requester in writing within five working days, invoking an additional seven working days to respond to the request, Then respond, within the additional seven working days, as described above.

FOIA permits the Commission to ask the requester to provide his or her name and legal address.

FOIA does not require that requests be in writing and requesters do not need to specifically state that records are being requested under FOIA.

FOIA regulations apply to all (non-exempt) documents in their original or existing format. The Commission is not required to create or compile information that does not already exist, or to provide it in a format in which it does not already exist.

Commission employees are encouraged to post frequently requested documents or information to the Commission's web site (www.mppdc.com (<http://www.mppdc.com/>))and direct requesters to that resource, if appropriate. The penalties for willfully and knowingly violating the Freedom of Information Act are \$250 (first violation) and \$1,000 (subsequent violations).

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 (804) 225-3056 or 1-866-448-4100. The FOIA Council also has a website with useful information about FOIA, including advisory opinions written by the Council: <http://dls.state.va.us/foiacouncil.htm>.

A sample FOIA request form is below.

(Date)

RE: Request for records under the Virginia Freedom of Information Act

Dear: Lewis Lawrence, Acting Executive Director

In accordance with the Virginia Freedom of Information Act (§ 2.2 -3700 et seq.) I am requesting copies of any records related to _____ . I would also like to request that all charges for supplying the records I have requested be estimated in advance. I understand that if you determine that the charges are likely to exceed \$200, I am obliged to pay that amount before you continue to process my request.

If you have any questions or require additional information in order to process my request, please do not hesitate to contact me at *(telephone number)*.

Thank you in advance for your cooperation in this matter.

Sincerely,