

Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of the Virginia Economic Development Partnership under the Virginia Freedom of Information Act

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

Making a Request for records from the Virginia Economic Development Partnership

- 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 the Virginia Economic Development Partnership, nor does it require the Virginia Economic Development Partnership to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Virginia Economic Development Partnership 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 the Virginia Economic Development Partnership, you may direct your request to Sandi McNinch. She can be reached at Post Office Box 798, Richmond, Virginia 23218, telephone 804-545-5617, facsimile 804-545-5611, or email smcninch@yesvirginia.org. You may also contact her with questions you have concerning requesting records from the Virginia Economic Development Partnership. 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 phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Virginia Economic Development Partnership's Responsibilities in Responding to Your Request

- The Virginia Economic Development Partnership 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 the Virginia Economic Development Partnership is irrelevant, and we cannot ask you why you want the records before we respond to your request. FOIA does, however, allow the Virginia Economic Development Partnership to ask you to provide your name and legal address.
- FOIA requires that the Virginia Economic Development Partnership 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) 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 the Virginia Economic Development Partnership 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 the Virginia Economic Development Partnership. 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 upfront, 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, the Virginia Economic Development Partnership may require payment of the past-due bill before it will respond to your new FOIA request.

Types of records

The following is a general description of the types of records held by the Virginia Economic Development Partnership:

- Personnel records concerning employees and officials of the Virginia Economic Development Partnership;
- Records of contracts which the Virginia Economic Development Partnership has entered into;
- Records related to the advantages to businesses of locating to or growing in the Commonwealth of Virginia, including information regarding available sites and buildings;
- Records related to certain economic development incentives accepted by businesses coming to or growing in the Commonwealth of Virginia, including final copies of performance agreements for discretionary economic development incentive grant programs; and
- Records provided by businesses seeking the assistance of the Virginia Economic Development Partnership, or records developed by the Virginia Economic Development Partnership, that relate to the trade and investment services offered by the Virginia Economic Development Partnership.

If you are unsure whether the Virginia Economic Development Partnership has the record(s) you seek, please contact Sandi McNinch directly at Post Office Box 798, Richmond, Virginia 23218, telephone 804-545-5617, facsimile 804-545-5611, or email smcninch@yesvirginia.org.

Commonly used exemptions

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

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia);
- 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));
- Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease (§ 2.2-3705.1 (8));
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12));
- Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected (§ 2.2-3705.6 (3)); and
- Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. As used herein: " Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104 of the Code of Virginia, and "working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

Policy regarding the use of exemptions

- The general policy of the Virginia Economic Development Partnership is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of the Virginia Economic Development Partnership.
- The general policy of the Virginia Economic Development Partnership is to invoke the contract negotiations exemption whenever it applies in order to protect the Virginia Economic Development Partnership bargaining position and negotiating strategy.
- The general policy of the Virginia Economic Development Partnership is to invoke the confidential proprietary information exemption, the contract negotiations exemption and the working papers exemption to protect information regarding ongoing or dormant economic development initiatives, requests for information from businesses and our responses to those requests, and interim drafts of performance agreements and other contracts. Final copies of the performance agreements and other contracts will generally be made available.