

# **Rights & Responsibilities:**

## **Requester Rights and Town of Leesburg Responsibilities under the Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), set forth at § 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 to inspection, and may only be withheld if a specific, statutory exemption applies.

No provision of § 2.2-3703 or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights under the Virginia Freedom of Information Act (FOIA) to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, § 2.2-3703(C) shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

FOIA is generally intended to promote an increased awareness by all persons of governmental activities. In furthering this goal, 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.

### **Citizen FOIA Rights**

- Citizens have the right to request to inspect **or** receive copies of public records, or both.
- Citizens have the right to request that any charges for the requested records be estimated in advance.
- If citizens believe that their FOIA rights were violated, they may file a petition in district or circuit court to compel FOIA compliance. Alternatively, the requester may contact the FOIA Council for a nonbinding advisory opinion.

### **Requesting Town of Leesburg Records**

- Citizens may request records electronically, by U.S. mail/delivery service (such as UPS, FedEx, etc.), or in person pick-up or inspection. FOIA does not require that the request be in writing, nor does the requester need to specifically state that the records are being requested under FOIA.
  - The Town utilizes GovQA software to process FOIA requests. This platform allows citizens to create a record of their request. It also gives the Town a clear statement of what records are requested, and avoid misunderstandings. However, the Town cannot refuse to respond to a FOIA request if the requester chooses not to submit it in writing or use the GovQA system. If the requester wishes not to use the GovQA system, please contact any FOIA Officer noted on the Web site or listed below.

- The request must identify the records with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or record number; instead, it requires that the request be specific enough so that Town staff can identify and locate the appropriate records. If no clarification is received within 30 days, the Town will consider the request withdrawn; however, the request can be reopened once clarification is received.
- The requester must ask for existing records or documents. FOIA gives citizens a right to inspect or receive a copy of **records**; it does not apply to a situation where requesters are asking general questions about Town work, nor does it require the Town to create a non-existent record.
- Citizens may choose to receive electronic records in any format used by the Town of Leesburg in the regular course of business.
  - For example, if a citizen is requesting records maintained in an Excel database, the requester may elect to receive those records electronically, via e-mail or on a computer disk or thumb drive, or to receive a printed copy.
- If the Town has questions about a request, please cooperate with staff's efforts to clarify the record type, 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 the Town may need to discuss the request with the citizen to ensure that staff understands what records are being requested.
- Citizens may be required to provide proof of full name and legal address to confirm Virginia residency. Post Office Boxes are not considered proof of Virginia residency.
- If the requester is a law firm or an insurance company, it may be asked to provide a signed client representation letter/document signed by the client. While this is not a requirement, refusal to do so could lead to the office being treated as a third party requester pertaining to that specific records request.

To request records from the Town of Leesburg, please submit a records request to the Town's Public Records Center at:

[https://leesburgva.govqa.us/WEBAPP/\\_rs/\(S\(5ifxkf4rllqh0rl40nyjvisg\)\)/supporthome.aspx](https://leesburgva.govqa.us/WEBAPP/_rs/(S(5ifxkf4rllqh0rl40nyjvisg))/supporthome.aspx).

Citizens who are unable to access this webpage may contact one of the Town of Leesburg's FOIA Officers below:

**General Town Records**  
**Eileen Boeing**  
**Clerk of Council**  
**703-771-2733**  
[eboeing@leesburgva.gov](mailto:eboeing@leesburgva.gov)

**Police Department Records**  
**Officer Michael Drogin**  
**Public Information Officer, Leesburg Police**  
**703-771-4538**  
[LPD-FOIA@leesburgva.gov](mailto:LPD-FOIA@leesburgva.gov)

In addition, the Freedom of Information Advisory Council is available to answer any questions about FOIA. The Council may be contacted by e-mail at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov) or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

## **The Town of Leesburg's Responsibilities in Responding to FOIA Requests**

- The Town of Leesburg must respond to a FOIA request within five working days of receipt. "Day One" is the first business day after receiving the request. The five-day period does not include weekends, holidays, or Town of Leesburg government emergency closures (i.e. weather-related emergencies).
- Citizens do not have to state the reason for a records request for the Town to respond. FOIA does, however, allow the Town of Leesburg to require the requester to provide a name and legal address.
- FOIA requires that the Town of Leesburg make one of the following responses to a request within the five-day time period:
  - 1) Provide the citizen with the requested records in their entirety.
  - 2) Withhold all of the records requested, because all of the records are subject to a specific statutory exemption. If all of the records are withheld, the Town must send a response in writing. The response must identify the volume and subject matter of the records being withheld, and state the specific section(s) of the Code of Virginia that allows the Town to withhold the records.
  - 3) Provide some of the requested records, but withhold others. The Town cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the Town may redact the portion of the record that may be withheld, and must provide the requester with the remainder of the record. The Town must provide the requestor with a written response stating the specific section(s) of the Code of Virginia that allows portions of the records to be withheld.
  - 4) Inform the requester in writing that the requested records cannot be found or do not exist (The Town is not the records custodian). However, if the Town is aware that another public body has the requested records, it will provide the public body's contact information in the response.
  - 5) It is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 total work days in which to provide one of the four preceding responses.
- If a citizen makes a request for a large number of records, and the Town feels that it cannot provide the records within 12 working days without disrupting other organizational responsibilities, the Town may petition the court for additional time to respond to a request. However, FOIA requires that the Town make a reasonable effort to reach an agreement with the requester concerning the production of the records before it goes to court.

## **Costs**

- A public body may make reasonable charges not to exceed its actual cost incurred in accessing, reviewing, redacting, duplicating, supplying, or searching for the requested records. 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. All charges for the supplying of requested records shall be estimated in advance at the citizen's request as set forth in § 2.2-3704(F) of the Code of Virginia.
- The requester may be required to pay for the records requested from the Town of Leesburg. FOIA allows the Town 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 the Town estimates that it will cost more than \$200 to respond to a request, it may require the requester to pay a deposit, not to exceed the amount of the estimate, before proceeding with the request. The five days allowed to respond to a request does not include the time between when the Town asks for a deposit and when the requester responds. If no response is received within 30 days, the request is deemed withdrawn.
- Citizens may request that the Town estimate in advance the charges for supplying the requested records. This will allow the requester to know upfront about any costs, and give the requester the opportunity to modify the request in an attempt to lower the estimated costs.
- If a citizen has unpaid FOIA request charges that are 30 days overdue, the Town of Leesburg may require payment before it responds to a new FOIA request.
- Click [here](#) to view how the Town of Leesburg assesses reasonable charges.

## **Record Types**

The following is a general description of the Town of Leesburg record types:

- Town Council and Council-appointed boards and commissions agendas and meeting minutes
- Fiscal Records
- Land Use and Development Plans
- Staff reports and correspondence
- Employees and officials' personnel records
- Contract records between the Town of Leesburg and other parties

## **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Town of Leesburg 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))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Records relating to criminal investigations (§ 2.2-3706)
- Out of state non-media requests (§ 2.2-3704 (A))
- Requests made by a person incarcerated in a state, local or federal correctional facility. (§ 2.2-3703(C))
- Advice of legal counsel to local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege. (§ 2.2-3705.1(2))
- Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under Va. Code § 2.2-3711. (§ 2.2-3705.1(3))
- Portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. (§ 2.2-3705.1(13))
- 911 caller information. (§ 2.2-3705.2(6))
- The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints. (§ 2.2-3705.3(8))
- State income, business, and estate tax returns, personal property tax returns. (§ 2.2-3705.7(1))
- Working papers and correspondence of the Mayor or chief executive officer of any political subdivision of the Commonwealth. (§ 2.2-3705.7(2))
- Criminal investigative files relating to an ongoing criminal investigation or proceeding are excluded from mandatory disclosure. (§ 2.2-3706.1(C))
- Criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from mandatory disclosure, with limited exceptions for certain persons. (§ 2.2-3706.1(D))

- Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties. (2.2-3706(B)(7))
- The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. (§ 2.2-3706(B)(10))
- Portions of a noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature...where the release of such information would jeopardize the safety or privacy of any person. (§ 2.2-3706(D))
- Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other confidential administrative investigations conducted by law-enforcement agencies that are made confidential by law. § 2.2-3706(B)(9))
- First five digits of a social security number contained in a public record. (§ 2.2-3815(A))
- Law enforcement records concerning juveniles. (§ 16.1-301(C)(6))
- Records of the Virginia Criminal Investigative Network (VCIN). (§ 19.2-389)

### **Existing resources**

The Town of Leesburg routinely posts commonly requested records on its Web site. Requesters are encouraged to visit the Town Web site at <https://www.leesburgva.gov> to view available records or in the Frequently Asked Questions (FAQ) section of the GovQA Public Records Center.