General Government Policy: The Rights of Requesters and the Responsibilities of the County of Clarke under the Virginia Freedom of Information Act

Distribution: Department Heads, County Website

Record of Revision

Revision No.	Revision Date	Description	Final Approval
New	11/28/2006	New Document	
1	7/15/2008	Change title to Exemptions and add reference to (§ 2.2-3705.3 (10)) and (§ 2.2-3705.7 (2)); Add reference to PD12110-03 General Government Public Records Disclosure and Copy Policy; Info-map and number document.	
2	11/5/2009	Update County Administration contact information. Update FOIA Council email address.	
3	07/01/2016	Add to County of Clarke "General Government Reporting to County Administrator"; Add to The County of Clarke General Government Reporting to the County Administrator Item 4 and Renumber 4 to 5; Costs Add new first bullet; Add Section - Departments, Boards/Committees/Commissions; Add Section - Types of Records; Add Section - Policy regarding Use of Exemptions; Add Section - FOIA Requests for Constitutional Offices / County Agencies Contact Information	
4	04/01/2017	Change Commonwealth Attorney Contact Point from Suni Mackall to Anne Williams	
5	07/01/2017	Treasurer Phone Number from 5187 to 5160; GDC & J&DR Listing to Clarke County General District and Juvenile & Domestic Relations Court: Kristi S. Wright, Director of Legislative and Public Relations Office of the Executive Secretary, Supreme Court of Virginia 100 N. Ninth Street, Third Floor, Richmond, VA 23219; 804-225-3474; Clarke County Public Schools From Dr. Bishop to Renee Weir	
6	03/01/2019	Update Commonwealth Attorney contact email address; Social Service contact name; CCPS and Joint Administrative Services mailing address, FOIA Council phone number	
7	04/10/2020	Update Circuit Court Clerk contact information	

Purpose and Scope

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 County of Clarke General Government Reporting to County Administrator

- 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 state specifically 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 County, nor does it require the County to create a record that does not exist.

- You may choose to receive electronic records in any format used by the County of Clarke 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 County of Clarke you may direct your request to:

  Lora B. Walburn, Clarke County Administration
  101 Chalmers Court, Suite B
  Berryville, VA 22611
  Telephone: 540-955-5175; Fax: 540-955-5170
  Email: lwalburn@clarkecounty.gov

  - You may also contact her with questions you have concerning requesting records from all departments under the direct responsibility of the County Administrator.
  - In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted:

E-mail: foiacouncil@dls.virginia.gov

Telephone: (804) 698-1810 or [toll free] 1-866-448-4100

The County of Clarke General Government Reporting to the County Administrator Responsibilities in Responding to Your Request

- The County of Clarke 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 is irrelevant, and we cannot ask you why you want the records before we respond to your request. FOIA does, however, allow the County to ask you to provide your name and legal address.
- FOIA requires that the County 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 County of Clarke 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 [7] 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 or 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.

  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 request of the citizen 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. 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 County of Clarke may require payment of the past-due bill before it will respond to your new FOIA request.

Departments and Boards / Committees / Commissions

The following is a listing of departments and boards, committees, commissions and authorities with records held by Clarke County General Government reporting to the County Administrator :

- Departments:
  - Animal Shelter
  - Building
  - County Administration
  - Emergency Management / Medical Services
  - Geographic Information Systems
  - Information Technology
  - Maintenance
  - Parks and Recreation
  - Planning
  - Zoning

- Board / Committees / Commissions
  - Agricultural & Forestal District Advisory Committee
  - BCCGC Joint Building Committee
  - Berryville Area Development Authority
  - Board of Equalization
  - Board of Supervisors

- Board of Well and Septic Appeals
- Board of Zoning Appeals
- Clarke County Historic Preservation Commission
- Clarke County Industrial Development Authority
- Conservation Easement Authority
- Economic Development Advisory Committee
- Fire & EMS Commission
- Parks & Recreation Advisory Board
- Planning Commission

Types of Records

The following is a general description of some of the types of records held by the listed departments and boards / committees / commissions:

- Agendas / Packets
- Animal adoption, intake
- Certificates of Occupancy
- Complaints
- Correspondence
- Minutes
- Ordinances / Code of Clarke County, Virginia
- Permits: Building, Special Event, Special Use, etc.
- Personnel records
- Programs
- Project files
- Public hearing notices
- Reports: Annual, Monthly, Incident, Project, etc.
- Resolutions
- Site Plans
- Statement of Economic Interest
- Work Orders

Commonly Used Exemptions

Some requested records could be exempt. The Code of Virginia allows any public body to withhold certain records from public disclosure. Some examples:

- Names, addresses and telephone numbers of complainants

furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body. (§ 2.2-3705.3 (10))

- 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))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Working papers and correspondence of the County Administrator (§ 2.2-3705.7 (2))

Policy Regarding the Use of Exemptions

- The general policy is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of Clarke County general government reporting to the County Administrator.
- The general policy is to invoke the contract negotiations exemption whenever it applies in order to protect bargaining position and negotiating strategy.

FOIA Requests for Constitutional Offices / County Agencies Contact Information

Direct inquiries to:

Clarke County Circuit Court Clerk: April Wilkerson
102 North Church Street, 1st Floor, Berryville, VA 22611
[540] 955-5116; afwilkerson@vacourts.gov

Clarke County Commissioner of the Revenue: Donna Peake
101 Chalmers Court, Suite B, 1st Floor, Berryville, VA 22611
[540] 955-5187; dpeake@clarkecounty.gov

Clarke County Commonwealth Attorney: Anne Williams
102 North Church Street, 2nd Floor, Berryville, VA 22611
[540] 955-5120; aknipe@clarkecounty.gov

Clarke County Sheriff's Office: Anthony Roper
100 North Church Street, Berryville, VA 22611
[540] 955-5152; jrose@clarkecounty.gov

Clarke County Treasurer: Sharon Keeler
101 Chalmers Court, Suite B, 1st Floor, Berryville, VA 22611
[540] 955-5160; treasurer@clarkecounty.gov

Clarke County General District and Juvenile & Domestic Relations Court: Kristi S. Wright, Director of Legislative and Public Relations
Office of the Executive Secretary, Supreme Court of Virginia
100 N. Ninth Street, Third Floor, Richmond, VA 23219
804-225-3474

Clarke County Public Schools: Renee Weir
317 West Main Street, Suite A, Berryville, VA 22611
[540] 955-6100; weirr@clarke.k12.va.us

Clarke County Department of Social Services: Brittany Heine
311 East Main Street, Berryville, VA 22611
[540] 955-3700

General Registrar and Director of Elections: Barbara Bosserman
101 Chalmers Court Suite B, 2nd Floor, Berryville, VA 22611
[540] 955-5168; vote@clarkecounty.gov

Joint Administrative Services [Accounts, Purchasing, Clarke County Sanitary Authority]: Thomas Judge
317 West Main Street, Suite B, Berryville, VA 22611
[540] 955-6172; tjudge@clarkecounty.gov

Related Documents

- PD12110-03 General Government Public Records Disclosure and Copy Policy

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