

The Rights of Requesters and the Responsibilities of HRTAC 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.

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.

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.

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

Making a Request for Records from HRTAC

- 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 HRTAC receiving your request to put your request in writing. This allows you to create a record of your request. It also gives HRTAC a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, HRTAC 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 HRTAC 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 HRTAC nor does it require HRTAC to create a record that does not exist.
- You may choose to receive electronic records in any format used by HRTAC in the regular course of business.
- If HRTAC have questions about your request, please cooperate with staff 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 HRTAC may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from HRTAC you may direct your request to Jennifer Coleman, 723 Woodlake Drive, Chesapeake, VA 23320, (757) 420-8300, (757) 523-4881 (Fax), jcoleman@hrtac.org. You may also contact her with questions you have concerning requesting records from HRTAC. 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@dls.virginia.gov, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

HRTAC Responsibilities in Responding to Your Request

- HRTAC 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 HRTAC is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow HRTAC to require you to provide your name and legal address.
- FOIA requires that HRTAC make one of the following responses to your request within the five-day time period:
 - 1) Provide you with the records that you have requested in their entirety.
 - 2) 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, HRTAC 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 the records to be withheld.

- 3) Provide some of the records that you have requested, but withhold other records. HRTAC cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, a portion of the record withheld may be redacted, and you must be provided with the remainder of the record. HRTAC 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) Inform you in writing that the requested records cannot be found or do not exist. However, if HRTAC has knowledge of another public body that has the requested records, HRTAC must include contact information for the other public body in our response to you.
 - 5) If it is practically impossible for HRTAC to respond to your request within the five-day period, a written statement will be sent to the requester, explaining the conditions that make the response impossible. This will allow HRTAC seven additional working days to respond to your request, giving HRTAC a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and HRTAC feels it cannot provide the records to you within 12 working days without disrupting other organizational responsibilities, HRTAC may petition the court for additional time to respond to your request. However, FOIA requires that HRTAC make a reasonable effort to reach an agreement with you concerning the production of the records before soliciting the 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 from HRTAC. FOIA allows requesters to be charged 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 cost estimate is over \$200.00 to respond to your request, HRTAC may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request.
- The five days that HRTAC has to respond to your request does not include the time between when a deposit is requested and when you respond.
- You may request an estimate in advance of 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 money is owed from a previous FOIA request that has remained unpaid for more than 30 days, HRTAC 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 HRTAC:

- Personnel records concerning employees and officials of HRTAC
- Records of contracts which HRTAC has entered into
- Organizational correspondence authored or received by HRTAC

If you are unsure whether HRTAC has the record(s) you seek, please contact Jennifer Coleman, 723 Woodlake Drive, Chesapeake, VA 23320, (757) 420-8300, (757) 523-4881 (Fax), jcoleman@hrtac.org.

Commonly Used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. HRTAC 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))