

# **Rights & Responsibilities:**

## **The Rights of Requesters and the Responsibilities of the Roanoke Sheriff's Office**

### **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**

- Citizens of the Commonwealth and representatives of the media have the right to request to inspect **or** receive copies of public records, or both.
- Citizens of the Commonwealth and representatives of the media 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 the Roanoke Sheriff's Office**

- 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 Roanoke Sheriff's Office, nor does it require the Roanoke Sheriff's Office to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Roanoke Sheriff's Office 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 Roanoke Sheriff's Office, you may direct your request to Kristen Borak, the FOIA Officer for the Roanoke Sheriff's Office. She can be reached at telephone: 540.853.1761, [kristen.borak@roanokeva.gov](mailto:kristen.borak@roanokeva.gov), or fax at 540.853.5353. You may also contact her with questions you have concerning requesting records from the Roanoke Sheriff's Office. 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](mailto:foiacouncil@dls.virginia.gov), or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.**

### **The Roanoke Sheriff's Office's Responsibilities in Responding to Your Request**

- The Roanoke Sheriff's Office 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 you do not have to state why you want the records before we respond to your request. FOIA does, however, allow to the Roanoke Sheriff's Office require you to provide your name and legal address.
- FOIA requires that the Roanoke Sheriff's Office 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 Roanoke Sheriff's Office 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 working 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

- 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 the Roanoke Sheriff's Office. 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. The Roanoke Sheriff's Office changes duplicating costs at the rate of:

### A. Fee Schedule.

1. There will be no fee charged to any requester for a report in which they are a victim or they reported the crime.
2. Photo Copy Documents.

Paper Size	Black & White Copy
8 ½ x 11 (letter)	\$.25 per impression
8 ½ x 14 (legal)	\$.30 per impression
11 x 17	\$.35 per impression

### 3. Photographs.

- a. 5 x 7 reprints - \$10.00 each
- b. 8 x 10 reprints - \$10.00 each

4. Digital photos – up to four photos per sheet.
    - a. White paper - \$1.00 per sheet.
    - b. Ink jet photos - \$2.00 per sheet.
  5. Compact disks - \$10.00 each.
  6. Electronic data.
    - a. Paper copy – Refer to chart above for Photo Copy Documents.
    - b. Data copy – disk must be provided by requester - \$1.00 per disk.
- 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 Roanoke Sheriff's Office 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 Roanoke Sheriff's Office:

- Criminal Incident Information
- Records related to currently incarcerated individuals

If you are unsure whether the Roanoke Sheriff's Office has the record(s) you seek, please contact Kristen Borak, FOIA Officer, directly at 540.853.1761, [kristen.borak@roanokeva.gov](mailto:kristen.borak@roanokeva.gov), or fax at 540.853.5353.

## **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Roanoke Sheriff's Office 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 police investigations and criminal record (§2.2-3706)
- Records relating to certain confidential tax information (§58.1-3)
- Records relating to facility security (§ 2.2-3705.2)
- Records to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.
- The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.
- The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

## **Policy regarding the use of exemptions**

### A. Records exempt from disclosure.

1. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

2. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.
3. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.
4. The following records are excluded from the provisions of the FOIA, but may be disclosed by the custodian, in his/her discretion, except where such disclosure is prohibited by law:
  - a. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined herein:
    - i. Criminal Incident Information. Law enforcement officials shall make available upon request criminal incident information relating to felony offenses. However, even this minimal amount of information may be withheld by the law enforcement agency if disclosure is likely to (1) jeopardize an ongoing investigation or prosecution, (2) jeopardize the safety of an individual, (3) cause a suspect to flee or evade detection; or (4) result in the destruction of evidence. It is important to note that the “criminal incident information” may be withheld until the specified damage is no longer likely to occur from release of information. Nothing herein shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.
    - ii. While “criminal incident information” is required to be released for felonies only, release of such information in misdemeanor cases is not prohibited.
    - iii. Information in the custody of law-enforcement officials relative to the identity of any individual, other than a juvenile, who is

arrested and charged, and the status of the charge or arrest shall be released.

- b. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;
- c. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
- d. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;
- e. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity; and
- f. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.