

FOIA POLICY OF THE SMYTH COUNTY CIRCUIT COURT CLERK'S OFFICE

The rights of requesters and the responsibilities of the Smyth County Circuit Court Clerk
under the Virginia Freedom of Information Act
[effective July 1, 2023]

The *Virginia Freedom of Information Act* (FOIA), § 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 one *that documents a transaction or activity, regardless of physical form or characteristic that is produced, collected received or retained in pursuance of Law or in connection with the transaction of public business.* All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

In addition to public records, the Circuit Court Clerk's Office is the repository for various official records of both the locality (Smyth County and its towns) and the state, such as deeds, probate documents, marriage licenses, documents filed in civil and criminal matters, just to name a few. Many of these official records are not covered by FOIA, but are still accessible and available to the public.

The Smyth County Circuit Court Clerk's Office joins the chorus of historic voices holding that *"a democracy operates best where the restrictions upon public access are kept to a minimum, and then only as established by that democracy through its statutes and case law."*

As stated in the Code of Virginia, 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.

The publically accessible "official records" may be inspected in the Clerk's Office during regular office hours, between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, legal holidays excepted. There are some official records that are not available to inspection by the public, such as any matter or document that is sealed by statute or court order, military discharge papers (DD214s), presentence reports, documents related to adoptions, unexecuted search warrants, just to name a few.

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 requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in the General District Court 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 Clerk'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 the Clerk's Office a clear statement of what records you are requesting, so that there is no misunderstanding. 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 Clerk's Office, nor does it require the creation of a record that does not exist.
- You may choose to receive electronic records in any format used by the Clerk'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 Circuit Court Clerk's Office:

Direct your request to the Clerk, John H. Graham, whose contact information is following:

By email: jgraham@vacourts.gov
By mail: 109 West Main Street, Suite 1081, Marion, Virginia 24354
By phone: (276) 782-4044

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

The Clerk's Office's Responsibilities in Responding to Your Request

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

- You may have to pay for the records that you request from the Clerk'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. 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. The current rate for copying is \$.50 per page. For requested information that requires in excess of one hour to produce, an additional fee will be charged at the rate of \$15.00 per hour.
- 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 Clerk'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 Clerk's Office:

- Land Records; including Deeds, Mortgages, Liens, Plats.
- Civil Litigation; including lawsuits, lien enforcement.
- Probate Matters; including Wills, List of Heirs, Inventories and Accountings.
- Marriage Records; including marriage licenses.
- Board of Supervisor Meeting Minutes.
- Historical Records of the County; including Order and Minute Books.
- Tax Records; in the form of "Land Books" of the Commissioner of Revenue.
- Criminal Prosecution; including Search Warrants, Case files and Capias'.

Commonly Used Exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Clerk's Office commonly withholds records subject to the following exemptions:

- The official records of the Clerk are exempted from FOIA under subdivision A5 of §2.2-3703 of the Code of Virginia. Under §17.1-208, these records are available to the public for inspection with any copies provided being subject to the fees set out in §17.1-275(A)(8) of the Code.
- Personnel records of staff pursuant to § 2.2-3705.1 (1) of the Code of Virginia, including social security numbers, health records, information on any court ordered judgments or liens on employees/officers, evaluations, and disciplinary actions.
- 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))
- Bank account numbers and identifying numbers for all other holdings of the Clerk's Office.
- Search Warrants that have yet to be executed and some juror information – pursuant to standing Order of the Court.

Policy regarding the use of exemptions

- The general policy of the Clerk's Office is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees/officials of the Office or would expose the general public to intrusions upon their private lives. As an example, another Clerk resisted a political party's attempt to obtain a listing of all holders of Concealed Handgun Permits in the county (presumably to develop a mailing list).
- The general policy of the Clerk's Office is to invoke the contract negotiations exemption whenever it applies in order to protect the Clerk's Office's bargaining position/ negotiating strategy.
- The general policy of the Clerk's Office is to invoke the exemption from providing any other records maintained for the operation of the Clerk's Office as deemed exempt by the Code of Virginia or upon the advice of the County's legal advisor.

ADOPTED THIS 10th DAY OF JULY, 2023.


 JOHN H. GRAHAM, CLERK