

Town of Lovettsville

Rights & Responsibilities

The Rights of Requesters and the Responsibilities of the Town of Lovettsville Under the Virginia Freedom of Information Act ADOPTED: April 6, 2017

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

Making a Request for Records from the Town of Lovettsville

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. For your convenience, the Town's Request for Records Form is located [HERE](#). 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 an oral request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing. Please note that the Town does create and keep its own written record of each FOIA request.

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 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 Town, nor does it require the Town to create a record that does not exist.***

You may choose to receive electronic records in any format used by the Town 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.

FOIA Officer and FOIA Advisory Council Contact Information

You may direct your request for public records, or questions about such records, to the Town's FOIA Officer:

Town Clerk
6 East Pennsylvania Avenue
P.O. Box 209
Lovettsville, VA 20180
540-822-5788
clerk@lovettsvilleva.gov

In addition, the Virginia Freedom of Information Advisory Council is a state agency that 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.

The Town's Responsibilities in Responding to Your Request

The reason behind your request for public records from the Town is irrelevant and you do not have to state why you want the records before we respond to your request. However, FOIA does allow the Town to require you to provide your name and legal address.

The Town 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.

As to each public record requested, FOIA requires that the Town make one of the following responses within the five-day time period:

- 1) **Provide Record.** We provide you with the records that you have requested in their entirety.
- 2) **Withhold Record.** 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) Provide & Withhold Record. 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) Don't Have Record. 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) Take More Time. If it is practically impossible for the Town to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response practically 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.

6) Require a Deposit. If the Town determines that the charges for fulfilling your record request will likely exceed \$200, then, before continuing to process the request, the Town may request that you pay a deposit equal to the estimated charges. The Town's request for such a deposit will extend the time the Town has to produce the requested records by the same number of days it takes to receive the deposit.

7) Need Payment of Past-Due FOIA Charges. If you owe the Town money from a previous FOIA request that has remained unpaid for 30 or more days, the Town may require payment of the past-due charges before it will process your new FOIA 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 Town. 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. Cost for staff time will be based on the hourly rate

of the appropriate staff member(s) responding to the request and range from approximately \$16/hour to \$57/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 30 or more days, the Town may require payment of the past-due bill before it will respond to your new FOIA request.

Commonly Used Exemptions

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

- Personnel records (Va. Code § 2.2-3705.1 (1))
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (Va. Code § 2.2-3705.1(3))
- Records prepared for or compiled exclusively for use in a lawfully held closed meeting (Va. Code § 2.2-3705.1(5))
- Appraisals of real property prior to its purchase, sale, or lease (Va. Code § 2.2-3705.1(8)).
- Personal information provided to the Town for the purpose of receiving email from the Town (Va. Code § 2.2-3705.1(10)).
- Information obtained by the Treasurer in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation (Va. Code § 58.1-3).
- Juvenile police records (Va. Code § 16.1-301).
- Police record that contains personal, medical, or financial information, the release of which would jeopardize the person's privacy or safety (Va. Code § 2.2-3706).
- A criminal investigative file (Va. Code § 2.2-3706).
- A criminal incident report for a misdemeanor (Va. Code § 2.2-3706).
- Vendor proprietary information (Va. Code § 2.2-3705.1 (6)).
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (Va. Code § 2.2-3705.1 (12)).

Policy Regarding the Use of Exemptions

The general policy of the Town is to invoke the exemptions above when they apply.