



## Policy Statement Number 220-09

**TO:** All VDEM Employees  
**FROM:** Michael M. Cline  
**SUBJECT:** Freedom of Information Act (FOIA) Requests  
**EFFECTIVE DATE:** May 15, 2009 (220-09)  
**SUPERSEDES:** June 1, 2007 (220-07)

### A. PURPOSE

The purpose of this policy is to outline procedures for handling a request for information under the Virginia Freedom of Information Act.

### B. POLICY

Freedom of Information Act requests received from citizens and the media in Virginia will be responded to as prescribed by law. The VDEM Freedom of Information Officer is the agency Human Resources Director. FOIA requests from the media will be handled by the Public Affairs Office.

### C. DEFINITION

The Virginia Freedom of Information Act (FOIA), located at §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.

### FOIA RIGHTS

A citizen of Virginia has the right to:

1. Inspect **or** receive copies of public records, or both.
2. Request that any charges for the requested records be estimated in advance.
3. 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.

### D. PROCEDURES

1. FOIA requests may be made by U.S. Mail, fax, e-mail, in person, or over the phone. The requester need not mention the words "Freedom of Information Request" or "FOIA" for it to be considered a FOIA request. Employees shall direct FOIA requests immediately to the FOIA Officer.

2. FOIA requests must provide “reasonable specificity” to identify the records being sought. 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 Virginia Department of Emergency Management (VDEM), nor does it require VDEM to create a record that does not exist.
3. The FOIA Officer will review all requests to determine whether they are within the purview of the Freedom of Information Act. The reason behind the request for public records is irrelevant; however, FOIA does allow the Agency to ask the requester to provide name and legal address.
4. The FOIA Officer will respond in writing to the requester within five business days of receiving the request. “Day One” is considered the day after the request is received. (The five-day period does not include weekends or holidays.) If it is practically impossible for the Agency to respond to the request within the five-work-day period, VDEM must state that in writing to the requester explaining the conditions that make the response impossible—this allows VDEM seven (7) additional work days to respond.
5. The Agency may petition the court for additional time to respond to requests for very large number of records that cannot be provided within 12 working days without disrupting other organizational responsibilities. FOIA requires the Agency to make a reasonable effort to reach an agreement concerning the production or the records before going to court to ask for more time.
6. FOIA allows the Agency 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.
7. If the FOIA Officer estimates that it will cost more than \$200 to respond to the request, we may require the requester to pay a deposit, not to exceed the amount of the estimate, before proceeding with the request. The five days to respond to the request does not include the time between when we ask for a deposit and when the requester responds.
8. Before processing a request for records, the Agency will require the requester to pay any amounts owed to VDEM from previous FOIA requests that remain unpaid for more than 30 days after billing.
9. If the information requested is unavailable or is excluded from release under the Freedom of Information Act, the FOIA Officer will send the requester a written explanation of why the information is unavailable within the appropriate time allotted. Specific reference will be made to the applicable Virginia Code sections rendering the information unavailable.

#### **E. INTERPRETATION**

The Human Resources Director or the State Coordinator is responsible for the official interpretation of this policy.

#### **F. REVIEW DATE**

This policy will be reviewed and updated when necessary.