

Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of VHDA under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), §§ 2.2-3700 – 2.2-3714 of the Code of Virginia, gives citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth, the right to see public records held by Virginia's public bodies, public officials, and public employees. Pursuant to § 2.2-3701, Virginia Housing Development Authority ("VHDA") is subject to FOIA.

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. Requests made to VHDA under FOIA are public records.

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 Virginia Freedom of Information Advisory Council (foiacouncil.dls.virginia.gov/) for a nonbinding advisory opinion.

Making a Request for records from VHDA

- You may request records by U.S. Mail, 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 to VHDA to put your request in writing. This allows you to create a record of your request. It also gives VHDA 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.
 - If you send your request by mail, send it to: VHDA Legal Division, Freedom of Information Act Request, P.O. Box 4529, Richmond, VA 23220-8529.
 - If you send your request by email, send it to: chris.wickham@vhda.com.
 - If you wish to make your request in person, come to: 601 South Belvidere Street, Richmond, Virginia, and tell the security guards you would like to speak to the Legal Division's FOIA person.
 - If you wish to make your request over the phone, please call Bonnie McRae at 804-343-5824. Be prepared to give her your name and address so VHDA can respond, and also for VHDA's records.

- 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 VHDA, nor does it require VHDA to create a record that does not exist.

- You may choose to receive electronic records in any format used by VHDA 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 VHDA, you may direct your request to Chris Wickham, Senior Counsel. He can be reached at chris.wickham@vhda.com, or by mail at: VHDA Legal Division, Freedom of Information Act Request, P.O. Box 4529, Richmond, VA 23220-8529, or call Bonnie McRae at 804-343-5824 . You may also contact him with questions you have concerning requesting records from VHDA. 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.

VHDA's Responsibilities in Responding to Your Request

- VHDA 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 VHDA is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow VHDA to require you to provide your name and legal address.
- FOIA requires that VHDA 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 VHDA 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. When the request is large, it will sometimes take VHDA several days to generate a description of what we have and an estimate of the costs to reproduce the records.
- 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 VHDA. 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.
- 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, VHDA 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 VHDA:

- Personnel records concerning employees and officials of VHDA.
- Records of contracts which VHDA has entered into.
- Records related to the award of federal low income housing tax credits.
- Records related to multi-family lending programs.
- Records related to single family lending programs.
- Records related to VHDA issued bonds.

If you are unsure whether VHDA has the record(s) you seek, please contact Chris Wickham via Bonnie McRae at 804-343-5824.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. VHDA 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 protected by federal regulations and laws, including but not limited to Nonpublic Personal Information, as that term is used and defined in 15 U.S.C. Section 6801, et. seq., and Consumer Financial Information protected by Regulation 16 CFR Part 313 issued pursuant to Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

Policy regarding the use of exemptions

- The general policy of VHDA is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of VHDA.
- The general policy of VHDA is to invoke the contract negotiations exemption whenever it applies in order to protect VHDA's bargaining position and negotiating strategy.
- The general policy of VHDA is to invoke all applicable exemptions, state and federal, in order to protect the personal financial information of individuals who do business with VHDA.