

1 **VIRGINIA FREEDOM OF INFORMATION ACT RIGHTS AND RESPONSIBILITIES**

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3 The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 et seq. of the Code of
4 Virginia, guarantees citizens of the Commonwealth and representatives of the media access to
5 public records held by public bodies, public officials and public employees.
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7 A public record is any writing or recording – regardless of whether it is a paper record, an electronic
8 file, an audio or video recording or record in any other format – that is prepared or owned by, or
9 in the possession of a public body or its officers, employees or agents in the transaction of public
10 business. All public records are presumed to be open to the public and may only be withheld if a
11 specific statutory exemption applies.
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13 The policy of FOIA is to promote an increased awareness by all persons of governmental activities.
14 In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and
15 that any exemption allowing public records to be withheld must be interpreted narrowly.
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17 **FOIA Rights**

- 18 ● Citizens of the Commonwealth and representatives of the media have the right to request
19 to inspect or receive copies of public records, or both.
- 20 ● Citizens of the Commonwealth and representatives of the media have the right to request
21 that any charges for the requested records be estimated in advance.
- 22 ● If a citizen of the Commonwealth or representative of the media believes that their FOIA
23 rights have been violated, the citizen or media representative may file a petition in district
24 or circuit court to compel compliance with FOIA. Alternatively, they may contact the FOIA
25 Council for a nonbinding advisory opinion.
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27 **Making a Request for Records from Alexandria City Public Schools (ACPS)**

- 28 ● Records may be requested by U.S. mail, fax, e-mail, in person or over the phone. FOIA
29 does not require that a request be in writing, nor that it specifically state that records are
30 being requested under FOIA.
- 31 ● As a practical matter, it may be helpful to both the requestor and the person receiving the
32 request to put the request in writing. This creates a record of the request. It also gives us a
33 clear statement of what records are requested, so that there is no misunderstanding over a
34 verbal request. However, we cannot refuse to respond to a FOIA request if it is not put in
35 writing.
- 36 ● A request must identify the records sought with “reasonable specificity.” This is a
37 common-sense standard. It does not refer to or limit the volume or number of records
38 requested; instead, it requires the requestor to be specific enough so that we can identify
39 and locate the records that are requested.
- 40 ● A request must ask for existing records or documents. FOIA creates a right to inspect or
41 copy records; it does not apply to general questions about the work of ACPS, nor does it
42 require ACPS to create a record that does not exist.
- 43 ● A requestor may choose to receive electronic records in any format used by ACPS in the
44 regular course of business. For example, if requested records are maintained in an Excel
45 file, the requestor may elect to receive those records electronically or to receive a printed
46 copy of those records.

- If we have questions about a request, please cooperate with staff's efforts to clarify the type of records sought, 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 a request to ensure that we fully understand what records are being sought.

To request records from ACPS, direct your request to ACPS' designated Freedom of Information Act officer (FOIA officer) who is responsible for serving as a point of contact for members of the public who wish to request public records.

In addition, the FOIA Advisory Council is available to answer questions about FOIA. The Council may be contacted by e-mail at foiacouncil@dls.virginia.gov or by phone at (804) 698-1810 or 1-866-448-4100.

ACPS' Responsibilities in Responding to Your Request

ACPS must respond to a request within five working days of receiving it. "Day One" is considered the day after the request is received. The five-day period does not include weekends or holidays.

The reason behind a request for public records from Alexandria City Public Schools is irrelevant and a requestor does not have to state why they want the records before we respond to the request. FOIA does, however, allow ACPS to require a requestor to provide their name and legal address.

FOIA requires that ACPS make one of the following responses to a request within the five-day time period:

1. We provide the records requested in their entirety.
2. We withhold all of the records requested, because all of the records are subject to a specific statutory exemption or exemptions. If all of the records are being withheld, we must send a response in writing. That writing must identify the volume and subject matter of the records withheld and state the specific section(s) of the Code of Virginia that allows us to withhold the records.
3. We provide some of the records 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 the remainder of the record. We must provide the requestor a written response stating the specific section(s) of the Code of Virginia that allows portions of the requested records to be withheld.
4. We inform the requestor in writing that the requested records cannot be found or do not exist (we do not have the records requested). 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.
5. If it is practically impossible for ACPS to respond to the 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 the request, giving us a total of 12 working days to respond to the request.

If a request is made for a very large number of records and we feel that we cannot provide the records within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to the request. However, FOIA requires that

93 we make a reasonable effort to reach an agreement with the requestor concerning the production
94 of the records before we go to court to ask for more time.

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96 **Costs**

97 Except with regard to scholastic records requested pursuant to subdivision A 1 of Va. Code § 2.2-
98 3705.4 that must be made available for inspection pursuant to the Family Educational Rights and
99 Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal
100 guardian of a minor student or by a student who is 18 years of age or older, ACPS may make
101 reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying or
102 searching for the requested records and makes all reasonable efforts to supply the requested records
103 at the lowest possible cost. ACPS does not impose any extraneous, intermediary or surplus fees or
104 expenses to recoup the general costs associated with creating or maintaining records or transacting
105 the general business of the schools. Any duplicating fee charged by ACPS will not exceed the
106 actual cost of duplication. Prior to conducting a search for records, ACPS notifies the requestor in
107 writing that it may make reasonable charges not to exceed its actual cost incurred in accessing,
108 duplicating, supplying, or searching for requested records and inquires of the requestor whether
109 the requestor would like to request a cost estimate in advance of the supplying of the requested
110 records as set forth in Va. Code § 2.2-3704.F. A requestor may request that ACPS estimate in
111 advance the charges for supplying the records requested. This will allow the requestor to know
112 about any costs upfront, or give the requestor the opportunity to modify the request in an attempt
113 to lower the estimated costs.

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115 The requestor may have to pay for the records requested from ACPS. FOIA allows us to charge
116 for the actual costs of responding to FOIA requests. This includes items like staff time spent
117 searching for the requested records, copying costs or any other costs directly related to supplying
118 the requested records. It does not include general overhead costs. Any costs incurred by ACPS in
119 estimating the cost of supplying the requested records will be applied toward the overall charges
120 to be paid by the requestor for the supplying of such requested records.

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122 If we estimate that it will cost more than \$200 to respond to a request, we may require the requestor
123 to pay a deposit, not to exceed the amount of the estimate, before proceeding with the request. The
124 five days that we have to respond to the request does not include the time between when we ask
125 for a deposit and when the requestor responds.

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127 If a requestor owes us money from a previous FOIA request that has remained unpaid for more
128 than 30 days, ACPS may require payment of the past-due bill before it will respond to a new FOIA
129 request.

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131 **Types of Records**

132 The following is a general description of the types of records held by ACPS:

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- Personnel records concerning employees and officials of ACPS

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- Scholastic records

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- Business and finance records

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- Operational records involving support departments such as Technology, Transportation, Facilities, Food Services, etc.

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- 138 ● Agendas, minutes and other records of the meetings of the School Board and committees
139 appointed by the School Board
- 140 ● Records of contracts to which ACPS is a party

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142 **Commonly Used Exemptions**

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

- 145 ● Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- 146 ● Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§
147 2.2-3705.1 (3))
- 148 ● Vendor proprietary information (§ 2.2-3705.1 (6))
- 149 ● Records relating to the negotiation and award of a contract, prior to a contract being
150 awarded (§ 2.2-3705.1 (12))
- 151 ● Records related to critical incident response (§ 2.2-3705.2 (14))
- 152 ● Scholastic records (§ 2.2-3705.4(1) and 20 U.S.C. § 1232g)

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154 **Policy Regarding the Use of Exemptions**

155 The general policy of ACPS is to invoke the personnel records exemption in those instances where
156 it applies in order to protect the privacy of employees and officials of ACPS.

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158 The general policy of ACPS is to invoke the contract negotiations exemption whenever it applies
159 in order to protect ACPS bargaining position and negotiating strategy.

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161 The general policy of ACPS is to invoke the scholastic records exemption in those instances where
162 it applies in order to protect the privacy of students and comply with other state and federal laws
163 governing the privacy of student records.

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166 Adopted: February 2, 2023

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168 Legal Refs: Acts 2003, c. 902.