

 <p>OFFICE OF THE STATE INSPECTOR GENERAL POLICY AND PROCEDURE</p>	Effective Date July 1, 2023	Number 120
	Supersedes July 1, 2018	
SUBJECT VIRGINIA FREEDOM OF INFORMATION ACT	Authority <i>Code of Virginia</i> §2.2-3700 et. seq	
	Attachments Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

VLEPSC Standards: ADM.22.03 (a-d)

CALEA Standards: 82.1.1

I. POLICY

The Office of the State Inspector General adheres to the *Code's* FOIA provisions, ensuring public records subject to disclosure under FOIA are made available upon request, subject to the procedures outlined within. OSIG also complies with the provisions of FOIA that require liberal interpretation of the law in favor of access and narrow interpretation of any exemption allowing the withholding of public records. The State Inspector General assumes responsibility for interpreting this policy.

II. PURPOSE

This policy outlines the procedure for reproducing the reports and addressing the associated costs of non-governmental agency, state employee and citizen records requests under the provisions of the Virginia Freedom of Information Act *Code of Virginia* [§ 2.2-3700](#) et seq.

III. DEFINITIONS

A. Public body: Any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth of Virginia, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth of Virginia supported wholly or principally by public funds.

- B. Public records: All writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, copying, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

IV. PROCEDURES

- A. Rights and Responsibilities under FOIA: Rights and responsibilities with respect to disclosure of information (Appendix I [Requestor Rights and Responsibilities] and Appendix II [OSIG Rights and Responsibilities]) and document request cost guidelines (Appendix III) shall be posted on the OSIG website and also available in hard-copy format at all OSIG offices and facilities.
- B. Records Disclosure Procedures:
1. All FOIA requests shall be forwarded to the FOIA-responsible officer.
 2. The FOIA-responsible officer shall record all FOIA requests and maintain a log of all such requests.
 3. The FOIA-responsible officer shall coordinate with unit managers to identify available records, determine applicable FOIA exemptions and respond to the requestor.
 4. The FOIA-responsible officer shall consult with the FOIA Council as needed on interpretation of state law.
 5. In situations where additional guidance is needed from the Office of the Attorney General, unit managers will be responsible for obtaining guidance from the Attorney General representative for OSIG.
 6. For complex requests, the unit managers shall work with the FOIA-responsible officer to coordinate the response to the requestor.
 7. The FOIA-responsible officer shall blind-copy the State Inspector General and Chief Deputy Inspector General on all FOIA responses.
 8. The FOIA-responsible officer, unit managers or their designee shall be responsible for ensuring that records are redacted in accordance with FOIA.

9. Records shall be disclosed as outlined in Appendix I and II of this policy.
10. See Section VIII for a list of OSIG-related FOIA disclosure exemptions.

C. Other Agency Notification: OSIG maintains records relevant to performance reviews, investigations and internal audit programs in other state agencies. For FOIA requests that relate to other state agencies and for documents that are not already publicly available on the OSIG website, OSIG shall provide the affected agency head, or other senior agency official in the absence of the agency head, and the agency's internal auditor a 24-hour advance notice (including at least one business day) prior to release of the information.

D. OSIG Related FOIA Exemptions:

1. Commonwealth law allows public bodies to withhold certain records from public disclosure.
2. OSIG may withhold records subject to *Code of Virginia* exemptions.

E. Records Request Fees:

1. FOIA allows OSIG to charge for the actual costs of responding to FOIA requests, including staff time spent searching for or copying requested records or any other costs directly related to fulfilling the request.
2. Records production charges shall not exceed actual costs incurred from searching, accessing, duplicating or supplying, requested records.
3. The charge cannot include general overhead costs.
4. Copier charges shall be computed at the hourly rate of the employee performing the function.
5. Postage expenses shall be computed using the prevailing rates established by the U.S. Postal Service.
6. OSIG shall review and update as necessary appropriate charges for recovering direct costs related to searching, copying and mailing records to non-governmental agencies, using the rate schedule in Appendix IV of this policy.
7. If charges apply, the FOIA Document Production Notice of Costs attachment shall accompany records produced in response to FOIA requests.

8. If the total charge is \$50 or less, the requestor will not be charged.
9. If the FOIA-responsible officer estimates it will cost \$200 or more to respond to a request, a deposit may be required from the requestor before the FOIA-responsible officer proceeds with the request.
10. Charges cannot exceed the amount of the estimate.
11. The statutory time frame, normally five working days, that OSIG has to respond will not be tolled until payment of the deposit is received by OSIG.
12. The FOIA-responsible officer must provide the requestor with a cost estimate in advance regarding charges for fulfilling the request. This gives requestors the opportunity to modify a request in an attempt to lower the estimated costs.
13. If OSIG is owed money from a previous FOIA request from the same requestor, and it has been unpaid for more than 30 days, OSIG may require payment of the past-due bill before responding to the new FOIA request.

F. Sample Response Letters: The sample response letters contained in appendices VI, VII, VIII, and IX shall be used in preparing responses to requests for records that:

1. Are exempt;
2. Will be provided in part and redacted in part;
3. Provide notification of request for extension of response time; or
4. Do not exist or may be in the possession of another public body.

G. FOIA Responsible Officer: The State Inspector General shall appoint a FOIA-responsible officer for OSIG to manage the OSIG FOIA program and respond to FOIA requests.

V. REVIEW DATE

This procedure shall be reviewed and updated no later than April 1, 2025.



MICHAEL C. WESTFALL

State Inspector General

Appendix I—Rights of Requestors Under FOIA**A. Your FOIA rights:**

- a. You have the right to request to inspect or receive copies of public records, or both.
- b. You have the right to request that any charges for the requested records be estimated in advance.
- c. 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.

B. Requesting Records from OSIG/State Fraud, Waste and Abuse Hotline:

You may request records by USPS, fax, email 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. Your FOIA request cannot be refused if you elect not to put it in writing; however, for practicality, it may be helpful for you and the FOIA-responsible officer to put your request in writing because:

- a. It creates a record of your request.
- b. It gives the FOIA-responsible officer a clear statement of what records you are requesting, lessening chances of misunderstanding.

C. Reasonable Specificity:

Requests should be specific enough to allow the FOIA-responsible officer to identify and locate your records. Reasonable specificity does not limit the volume or number of records you may request.

D. Existing Records:

FOIA gives you a right to inspect, receive or copy records; however, it does not apply to general questions about OSIG's work, nor does it require OSIG to create a record that does not exist.

E. Format:

You may receive records in any format, as long as it is a format available to OSIG in the regular course of business.

F. Clarification/Communication:

If the FOIA-responsible officer has questions about your request, please cooperate with staff's efforts to clarify the type of records you are seeking, or to attempt to reach a reasonable agreement on time frame if a request is large. The FOIA-responsible officer may need to discuss your request with you to ensure you receive the correct records.

G. FOIA Officer Contact Information:

a. USPS

Office of the State Inspector General

Attention: FOIA Officer

P.O. Box 1151

Richmond, VA 23218

b. Email

osig@osig.virginia.gov (Include in subject line: Attention FOIA Officer -
Office of the State Inspector General)

c. Phone

804-625-3255 (Ask for the FOIA Officer)

H. Virginia Freedom of Information Advisory Council:

The Virginia Freedom of Information Advisory Council is also available to answer any questions you may have about FOIA. Contact the Council by:

a. Email

foiacouncil@dls.virginia.gov

b. Phone

804-698-1810 or 866-448-4100

Appendix II—OSIG FOIA Responsibilities

- A. The FOIA-responsible officer must respond to FOIA requests within five business days of receipt.
 - a. Day one begins the day after receipt of the request.
 - b. The five-day period does not include weekends or state holidays.
- B. The reason behind a request for public records from OSIG is irrelevant, and a requestor does not have to state why they want records before the FOIA-responsible officer responds to the request.
- C. The FOIA-responsible officer is allowed to ask a requestor for their name and legal address.
- D. The FOIA-responsible officer must respond to the requestor within five working days, not including state holidays and weekends, in one of the following ways:
 - a. Fulfills the request in its entirety.
 - b. Withholds all requested records because they are subject to a specific statutory exemption. If all records are withheld, OSIG must send the requestor a response in writing that identifies the volume and subject matter of the records being withheld, and states the specific Code of Virginia section that allows records to be withheld.
 - c. Provides some of the records requested, but withholds other records or portions of other records. An entire record cannot be withheld if only a portion of it is subject to an exemption. In that instance, the specific portion of the record may be redacted and the remainder of the record provided. A written response stating the specific Code of Virginia section that allows portions of the requested records to be redacted must be sent along with the redacted records to the requestor.
 - d. Provides a written response to the requestor that the requested records cannot be found or do not exist (OSIG does not have the records requested). If another public body may have the requested records, the FOIA-responsible officer must state this in the written response and include contact information for the other public body.
 - e. If it will be difficult to respond to a request within the statutory five-day period, the FOIA-responsible officer must state this in writing, explaining the conditions that make the response impossible. This provides OSIG with seven additional business days to respond to a request for a total statutory time frame of 12 working days (not including state holidays and weekends).
 - f. If a request is made for a very large number of records, and OSIG believes it cannot provide the records to the requestor within 12 working days without disrupting its other organizational responsibilities, OSIG may petition the court for additional time to respond to a request.

- g. FOIA requires that OSIG make a reasonable effort to reach an agreement with the requestor concerning the production of the records before petitioning the court for more time.

Appendix III—Document Request Cost Guidelines

- A. FOIA allows OSIG to charge for the actual costs of responding to FOIA requests and requestors may have to pay for records requested from OSIG.
 - a. Charges may include:
 - i. Staff time spent researching and accessing requested documents.
 - ii. Duplication/photocopies/scans of documents.
 - iii. Sending documents (e.g., USPS costs).
 - b. The charge **cannot** include general overhead costs.
- B. If the total charge is \$50 or less, the requestor will not be charged.
- C. If OSIG estimates that it will cost \$200 or more to respond to a request, OSIG may require a deposit be paid, not to exceed the amount of the estimate, before proceeding with a request. **The statutory time frame, normally five working days, that OSIG has to respond to a FOIA request will not be tolled until payment of the deposit is received by OSIG.**
- D. A cost estimate must be made in advance by OSIG regarding charges for supplying requested records. This gives requestors the opportunity to know about any costs in advance and modify a request in an attempt to lower the estimated costs.
- E. If OSIG is owed money from a previous FOIA request from the same requestor, and it has been unpaid for more than 30 days, OSIG may require payment of the past-due bill before responding to the new FOIA request.

Appendix IV—OSIG Document Production Rates Schedule

A. As of April 1, 2023

a. To be reviewed by July of each year.

b. Updates/changes to rates must be sent to all staff.

B. Part I—Photocopying

Costs include copier paper, toner and equipment charge per sheet – \$0.10 per page.

C. Part II—Postage

Postage will be calculated according to current USPS First Class Mail rates.