

The Virginia Freedom of Information Act (FOIA)

General Overview

❖ **What is the Virginia Freedom of Information Act?**

The Virginia Freedom of Information Act, or FOIA, is the Act that addresses citizens' and media representatives' rights to access public records and public meetings as found in §§ 2.2-3700 through 2.2-3715 of the Code of Virginia.

The Code of Virginia, hereafter referenced as "Code", provides in § 2.2-3700(B):

"By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted... This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth."

❖ **Are Soil and Water Conservation Districts (SWCDs or districts) subject to the Act?**

Yes, SWCDs are considered a "public body" covered by FOIA.

Code § 2.2-3701:

"Public body means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any *political subdivision of the Commonwealth*..." (Emphasis added)

❖ **Who is guaranteed access to records of public bodies?**

Code § 2.2-3704(A):

"All public records shall be open to 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."

FOIA Training Requirements

❖ **Do newly elected SWCD Directors need to be familiar with FOIA?**

Yes, the Act states that people elected and appointed to a public body need to become familiar with FOIA.

Code § 2.2-3702:

"Any person elected, reelected, appointed or reappointed to any body not exempted from this chapter shall (i) be furnished... with a copy of this chapter

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within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.”

❖ **Are there any specific training requirements for directors?**

Yes, the Act states that each local elected official shall complete a training session within two months after assuming the local elected office and at least once during each consecutive period of two calendar years.

Code § 2.2-3704.3(B):

“Each local elected official...shall complete a training session described in subsection A within two months after assuming the local elected office and thereafter at least once during each consecutive period of two calendar years commencing with the date on which he last completed a training session, for as long as he holds such office.”

❖ **Who provides training for directors?**

The Act states that the FOIA Council shall provide in-person or online training sessions for local elected officials.

Code § 2.2-3704.3(A):

“The Virginia Freedom of Information Advisory Council (the Council)...shall provide in-person or online training sessions for local elected officials...on the provisions of this chapter.”

❖ **Who maintains training records?**

The clerk’s office maintains a record of those who are subject to the training requirement and the date of the completed training sessions.

Code § 2.2-3704.3(C):

“The clerk of each governing body...shall maintain records indicating the names of elected officials subject to the training requirements...and the dates on which each such official completed training sessions satisfying such requirements.”

Note: “Clerk of each governing body” refers to the Clerk of the Board of Supervisors, City Council or Town Council of the respective locality represented by the elected director.

Public Meetings

Code § 2.2-3701 (emphasis added):

“Open meeting or public meeting means a meeting at which the public may be present.”

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❖ **If three directors get together to discuss business, is their gathering considered an “open meeting”? What about district employee/ staff meetings?**

A gathering of three or more SWCD directors (or a quorum if less than three) to discuss district business is considered an open meeting.

Code § 2.2-3701:

“Neither the gathering of employees of a public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

❖ **Is a social event attended by two or more directors considered an “open meeting”?**

No, as long as no district business is discussed at the event *and* as long as the event or attendance at the event was not orchestrated for the purpose of transacting district business, it is not considered an open meeting.

Code § 2.2-3701:

“Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body...at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body...shall be deemed a "meeting" subject to the provisions of this chapter.”

❖ **Are SWCD committee meetings considered “open meetings”?**

Yes, committee meetings are subject to the same requirements; “any committee, subcommittee or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body” must comply with provisions of this Act.

Code § 2.2-3701.

❖ **If there are fewer than three directors but several associate directors and a SWCD staff member appointed to a committee, would the committee meeting still be considered an “open meeting”?**

The number of elected or appointed directors selected to serve on a committee does not change its status as a “public body” subject to FOIA under the definition cited in the question above (“any committee, subcommittee or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body”). The Code goes a step further to say “It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members”.

The constituent membership of a committee is comprised of those who are appointed to the committee by the SWCD board. It may include but is not limited to directors,

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associate directors, staff of partnering agencies and even employees of the SWCD as long as employees are appointed to the committee by the SWCD board.
Code § 2.2-3701.

Note: The threshold number of three members (or a quorum) referenced in the question comes from the definition of “meeting” in the same section, which is referenced below:
Code § 2.2-3701:

““Meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through electronic communication pursuant to Code § 2.2-3708.2 or Code § 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

❖ **Does that mean that SWCD employees may count toward the constituent membership of the committee?**

SWCD employees only count toward the constituent membership of a committee if they are appointed to the committee by the board. If they are not appointed to the committee but are assisting with the committee as a part of their duties as employees then they do not count toward the constituent membership of the committee.

Closed Meetings

Code § 2.2-3701:

“Closed meeting means a meeting from which the public is excluded.” (Emphasis added)

❖ **When are closed meetings allowed?**

Closed meetings may be held only for certain purposes as designated by the Act. Examples include discussion of personnel matters, consultation with legal counsel, discussion of special awards and review of certain exempt records related to resource management plans. A list of the closed meeting purposes is found in the Code § 2.2-3711(A).

❖ **How does a district hold a closed meeting?**

There is a specific closed meeting procedure outlined in the Code § 2.2-3712. The district must hold an open public meeting at which a director makes an appropriate motion to go into a closed session.

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❖ **Is there any procedure for making a closed meeting motion?**

Yes, to be a lawful closed meeting the motion must do three things

Code § 2.2-3712(A):

- 1) Identify the subject matter.
- 2) State the purpose of the closed meeting.
- 3) Refer to the specific exemption (from the list in Code § 2.2-3711) that allows the closed meeting.

❖ **What are the rules the district must follow while in a closed meeting?**

Among many important provisions within § 2.2-3712, discussion in the closed meeting must be restricted to items identified in the closed meeting motion.

Code § 2.2-3712(A-H).

❖ **May non-board members be present in a closed meeting?**

Yes. If additional people are considered necessary for the discussion, or if their presence will reasonably aid the public body's discussion, they are allowed.

Code § 2.2-3712(F).

❖ **Is the board allowed to vote on items during the closed meeting?**

No. The Act is very specific about limiting action taken during closed meetings. All votes must be taken in an open meeting setting.

Code § 2.2-3712(H):

“Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by §2.2-3707.”

Code § 2.2-3711(B):

"No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting."

❖ **What procedure is followed to conclude a closed meeting and reconvene an open meeting?**

The public body “shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member’s knowledge:"

- 1) Only topics that are exempt under one or more of the closed meeting purposes were discussed.

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2) Only matters identified in the original closed meeting motion were discussed. If a director believes there was a departure from requirements of the two items above, they must state their reasons prior to the referenced vote, to be recorded in the minutes of the open meeting.
Code § 2.2-3712(D).

Meeting Notices

❖ What does the Act require in terms of meeting notices?

Code § 2.2-3707(D):

“Every public body shall give notice of the *date, time, location* and *remote location*, if required, of its meetings by: (1) posting such notice on its official public government website, if any; (2) placing such notice in a prominent public location at which notices are regularly posted; *and* (3) placing such notice at the office of the clerk of the public body, or in the case of a public body that has no clerk, at the office of the chief administrator. Publication of meeting notices by electronic means shall be encouraged. The notice shall be posted at least three working days prior to the meeting.” (Emphasis added.)

Note: “Office of the clerk of the public body or the office of the chief administrator” in this section of Code refers to the SWCD Office. This is different from the way it is defined in § 2.2-3704.3(C) where the “Clerk of each governing body” refers to the Clerk of the Board of Supervisors, City Council or Town Council of the respective locality represented by the elected director.

❖ Must a district send meeting notices to every person individually?

Yes, if the person files a written request for direct notice of meetings.

Code § 2.2-3707(F):

“Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.”

❖ If the monthly meeting is held on the same day, time and place every month must the district give separate notice each month?

No, as long as the district publishes written notice of the set meeting dates, the Act is satisfied. However, if any changes are made to the regular day, time and place,

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supplementary notice of the change(s) must be published and sent to those requesters who requested direct notice at least three working days prior to the meeting.

❖ **What if the district changes its meeting date or holds an emergency meeting and there are less than three working days prior to the meeting?**

Code § 2.2-3707(E):

“Notice, reasonable under the circumstance, of special, emergency or continued meetings shall be given contemporaneously with the notice provided to the members of the public body conducting the meeting.”

The citizens who filed a written request for direct notice and district directors must be notified at the same time. If the meeting will be conducted in really short notice and mail cannot be delivered in time, district directors and the citizen requesters will be contacted by phone.

Meeting Agendas

Code § 2.2-3707(G):

“At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.”

In the above statement all agenda materials, (with the exception of “exempt” materials) should be made available for public scrutiny. Some examples of exempt materials include tax returns, medical records, personnel records, personal or proprietary information supplied relating to a resource management plan as per § 10.1-104.7(E), and site specific location information about rare, threatened, endangered or imperiled plant and animal species, natural communities, caves and significant historic and archaeological sites if that disclosure would jeopardize the existence or integrity of the resource. A complete listing of exempt items is found in Code §§ 2.2-3705.1. through 2.2-3706.1.

Electronic Communication Meetings

❖ **If a district board meets and there isn’t a quorum of directors present to vote on items, may an absent voting member be called so they may join the meeting by telephone to obtain an additional vote?**

No. This is a direct violation of the Act unless permitted by §2.2-3708.2 or §2.2-3708.3(C) or other provisions of law that allow for a meeting without a quorum being present in one location. When members are allowed to exercise the remote participation provision in non-emergency situations, participation is defined as being “...by an

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individual member of a public body by electronic communication means *in a public meeting where a quorum of the public body is otherwise physically assembled*".

Code § 2.2-3701.

❖ **Is there any situation that would allow for a district to hold an electronic communication meeting without a quorum physically assembled?**

Yes, there are two provisions. A district can hold electronic communications meetings in emergency situations and all-virtual public meetings and there are specific stipulations associated with each provision that are outlined in the Code.

Code § 2.2-3708.2:

“Any public body...may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency...or the locality in which the public body is located has declared a local state of emergency...provided that (i) the catastrophic nature of the declared emergency makes it impractical or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities.”

Code § 2.2-3708.3(C) and § 2.2-3708.3(C)(9):

“...any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D...and the public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting...”

❖ **Where can I go for more information?**

Please reference the “Guidelines for Meeting through Electronic Communications in Non-Emergency and Emergency Situations” document included in the SWCD Director Orientation Notebook and the Virginia FOIA Council’s document titled *Electronic Meetings Under the Virginia Freedom of Information Act* which can be found at <https://foiacouncil.dls.virginia.gov/ref/E-Meetings%20Guide%202023.docx>. And, as always, please contact the FOIA Council with questions or visit the FOIA Council’s [website](#) for additional information.

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Minutes

❖ **Are recorded minutes required at all district meetings (including committee meetings)?**

Yes. “Minutes shall be taken at all open meetings”. Committee meetings are considered “open meetings”. Therefore, minutes are required at such meetings. Draft minutes and all other records of open meetings, including audio or audio/visual records are also considered public records.

Code § 2.2-3707(I):

“Minutes shall be in writing and shall include, (a) the date, time and location of the meeting, (b) the members of the public body recorded as present and absent, and (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.”

❖ **Are there any posting requirements for minutes?**

Yes. “Any local public body subject to the provisions of this chapter shall post minutes of its meetings on its official public government website, if any, within seven working days of final approval of the minutes.”

Code § 2.2-3707.2.

❖ **What if the district does not have a website?**

“If the local public body does not own or maintain an official public government website, such public body shall make copies of all meeting minutes available no later than seven working days after final approval of the minutes (i) at a prominent public location in which meeting notices are regularly posted pursuant to subdivision C 2 of Code § 2.2-3707; (ii) at the office of the clerk of the public body; or (iii) in the case of a public body that has no clerk, at the office of the chief administrator.

Code § 2.2-3707.2.

❖ **Does this posting requirement apply to all districts?**

No. As a result of the definition of “local” public body, this requirement only applies to SWCDs that cover a single locality. SWCDs that cover more than one locality fall under the definition of a “regional public body” that is listed in FOIA and are not required to post minutes but are strongly encouraged to do so.

Code § 2.2-3701:

““Regional public body” means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.”

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Public Records

Code § 2.2-3701:

“Public records” means all writings and recordings that consist of letters, words or numbers, or their equivalent...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.”

❖ What records may the public see? Are there any exceptions?

Unless a record is deemed an exception in this Act or another Virginia or federal statute, it shall be made available to the public. The Act states that “all public records shall be open to inspection and copying by any citizens of the Commonwealth during regular office hours...”.

There are over 100 exemptions listed in the Act found under Code §§ 2.2-3705.1 through 2.2-3706.1. The district may choose not to disclose these excluded items. Examples include tax returns, medical records, personnel records, information supplied for the purpose of a resource management plan (as per § 10.1-104.7(E)) and site specific location information about rare, threatened, endangered or imperiled plant and animal species, natural communities, caves and significant historic and archaeological sites if that released would jeopardize the existence or integrity of the resource.

❖ Are district employee salaries open to public access?

Yes. The “records of the name, position, job classification, official salary or rate of pay of...any officer, official or employee of a public body” are open to the public as long as the individual makes more than \$10,000 a year.

Code § 2.2-3705.1(1).

❖ Is one employee allowed to know the official salary of another?

Yes. Government employees and officials have the same FOIA rights as any other citizen.

Code § 2.2-3704(A).

Resource Management Plans and FOIA

❖ Are resource management plan records exempt from FOIA?

Yes. Resource management plans and information provided by an individual for the purpose of a resource management plan are listed in FOIA as records that are exempt from public access.

Code § 2.2-3705.6(25)

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“Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency or board of the Commonwealth pursuant to §§10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.”

❖ **Can an open meeting be closed to discuss resource management plans?**

Yes. An open meeting may be closed to allow for discussion of resource management plans and associated material as authorized by FOIA. The law provides that this exemption shall not apply, however, to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or for information that has been transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

Code § 2.2-3711(A)(45):

“Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.”

5-day Response Time for Public Records

❖ **What procedure does the district follow when it is asked for records?**

The district must respond to the requester in writing within five working days of receiving the request. There are several responses the district can make:

- 1) The records are made available as requested. No written response is needed if the district is able to provide the records within five working days of receipt of the request.
- 2) The records are entirely withheld as permitted by the Act or another statute. In this case the district must put in writing the volume and subject matter of the records and what specific section(s) of the Code exempt the records from disclosure.
- 3) The records are provided in part and withheld in part. As stated above, the district must put in writing the volume and specific section(s) of the Code that exempts the withheld portion(s) of the request.

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- 4) State that the records could not be found or do not exist. If the district knows that another public body has the records, then the district must provide contact information for the other public body.
- 5) State that it isn't practically possible to provide all the requested records or to determine whether they are available within five working days. This response must be provided in writing and specify the conditions which make a response impossible. As long as the district lets the requester know this within five working days of the request, then the SWCD shall have an additional seven working days to provide one of the four previous responses.

Code § 2.2-3704(B).

*Failing to respond is deemed a denial of the request and is a violation of FOIA.

Code § 2.2-3704(E).

❖ **What if there isn't enough time to respond to a request within 12 working days?**

The district can petition the appropriate court for an extension if the request is of a large volume or requires a lengthy search and the district cannot fulfill its operational duties. However, the district first must make "reasonable efforts to reach an agreement with the requester concerning the production of the records requested" before proceeding with the petition.

Code § 2.2-3704(C).

❖ **Is the district allowed to ask why the records are needed?**

The Virginia Supreme court ruled that the motive for a record request is irrelevant. The requester is not obligated to tell the district why the records are being requested. *Associated Tax Service, Inc. v. Fitzpatrick*, 236 Va.181,372 S.E.2d 625 (1988).

Electronic Records

❖ **Is the district required to process a request for records stored on a computer? What if exempt and nonexempt records are present on the same database?**

Yes, the district must process a request for electronic records unless the records are exempt under the Act or another statute. The district can charge for this service as stated in the next section entitled "Record Fees". If portions of a database are exempt and others must be disclosed, then only the exempt portions would be redacted. Removing exempt fields from a database is not considered the creation of a new record.

Code § 2.2-3704(F and G).

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Record Fees

Code § 2.2-3704(F):

“...a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost...Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.”

❖ Is a district required to notify a requester that there are fees associated with fulfilling a request for information? Is there any requirement to provide an estimate in advance of supplying the records?

Yes. If a district has a policy to charge a requester for fulfilling a request for information, then it shall notify the requester in writing that there are fees associated with the fulfillment of the request. Such notification must be made before the district begins searching for the records and the district must inquire as to whether the requester would like to have a cost estimate. If the requester requests a cost estimate, then the estimate must be provided before the district fulfills the request.

Code § 2.2-3704(F).

“Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. The public body shall provide the requester with a cost estimate if requested.”

❖ If the district has a request for records and the cost to access and duplicate them will be over \$200 may they ask for the money up front?

Yes. “In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records.”

Code § 2.2-3704(H).

❖ Are districts required to provide an electronic payment method when charging for production of requested records?

No, districts are not *required* to provide an electronic payment method, but they are encouraged to do so. The Code language specifically mentions “local public bodies” which means that this provision applies directly to SWCDs that cover only one locality;

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regional public bodies (SWCDs that cover more than one locality) are not directly included but are encouraged to do the same. “Any local public body that charges for the production of records pursuant to this section may provide an electronic method of payment through which all payments for the production of such records to such locality may be made.”

Code § 2.2-3704(F).

FOIA Officer Requirement

Code § 2.2-3704.2(A):

“All public bodies...shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body’s compliance with the provisions of this chapter.”

❖ Are there any training requirements for the FOIA Officer?

Yes! “Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least once during each consecutive period of two calendar years commencing with the date on which he last completed a training session by legal counsel for the public body or the Virginia Freedom of Information Advisory Council (the Council) or through an online course offered by the Council.”

Code § 2.2-3704.2(E)

❖ Is the district required to post the name of its FOIA officer?

Yes.

Code § 2.2-3704.2(C):

“...The name and contact information of the public body’s FOIA officer... shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body’s place of business, posting on its official public government website, or including such information in its publications.”

Code § 2.2-3704.2(F):

“The name and contact information of a FOIA officer trained by legal counsel of a public body shall be (i) submitted to the Council by July 1 of the year a FOIA officer is initially trained on a form developed by the Council for that purpose and (ii) updated in a timely manner in the event of any changes to such information.”

Code § 2.2-3704.2(G):

“The Council shall maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve.”

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FOIA Remedies

A person who feels his or her FOIA rights have been violated may file a petition for mandamus or injunction against the public body. Stated simply, a petition asks the court to order the public body to do something (mandamus) or not to do something (injunction). A single violation, including a procedural violation, is enough for a petition to be brought. If the petitioner substantially prevails, FOIA requires the public body to pay his or her court costs, attorney fees, and any expert witness fees, unless there are special circumstances that would make the award unjust. A court may consider the reliance of a public body on an opinion of the OAG or a decision of a court that substantially supports the public body's position.

Code § 2.2-3713.

FOIA Penalties

If the court finds that an officer, employee, or member of a public body “willfully and knowingly” was in violation of this Act, then it “shall impose upon such officer, employee, or member...a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid to the Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.”

Code § 2.2-3714(A).

In addition to any of the above penalties imposed, “...if the court finds that any officer, employee, or member of a public body failed to provide public records to a requester...because such officer, employee, or member altered or destroyed the requested public records with the intent to avoid the provisions of this chapter with respect to such request prior to the expiration of the applicable record retention period” established by the Virginia Public Records Act, “the court may impose upon such officer, employee, or member in his individual capacity...a civil penalty of up to \$100 per record altered or destroyed, which amount shall be paid into the Literary Fund.”

Code § 2.2-3714(B).

In addition to any of the above penalties imposed, “...if the court finds that a public body voted to certify a closed meeting in accordance with subsection D of §2.2-3712 and such certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of §2.2-3712, the court may impose on the public body...a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is appropriate, the court shall consider” reliance on opinions of the OAG, court cases and published opinions of the FOIA Council.

Code § 2.2-3714(C).

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❖ **Are there any provisions for relying on opinions from the FOIA Council?**

Yes! “Any officer, employee, or member of a public body who is alleged to have committed a willful and knowing violation...shall have the right to introduce at any proceeding a copy of a relevant advisory opinion issued [by the FOIA Council]...as evidence that he did not willfully and knowingly commit the violation if the alleged violation resulted from his good faith reliance on the advisory opinion.”

Code § 2.2-3715.

Virginia Freedom of Information Advisory Council

Website- <http://foiacouncil.dls.virginia.gov/> Phone- 1-866-448-4100 or 804-698-1810

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