

Virginia Freedom of Information Act Requests

The Virginia Freedom of Information Act, Va. Code § 2.2-3700 *et seq.* (“FOIA”), provides 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 purpose of FOIA is to promote an increased awareness by all persons of governmental activities. Thus, FOIA requires that the law be interpreted liberally in favor of access, and that any exemption allowing public records to be withheld be interpreted narrowly.

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 general district court or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Easiest Way to Get Information

Information you seek may already be available online. Most information that is available for disclosure to the public can be found on the following web sites:

- Department of Health Professions main website: www.dhp.virginia.gov. This website contains laws, regulations, information about how to file a complaint, newsletters, policy (including guidance documents), recent case decisions, and links to other boards, divisions, and programs at DHP.
- License Look-up: <https://dhp.virginiainteractive.org/Lookup/Index>. This site allows any user to look up current licensure information. It also provides access to purchase larger lists of licensees. Any public orders or information related to a licensee can be located using this site.
- Physician Profiles: <https://www.vahealthprovider.com/index.asp>. This site contains extensive self-reported information about currently licensed doctors of medicine, osteopathic medicine, and podiatry. The information includes: practice location; hospital affiliations; education; residencies; board certifications; honors and awards; appointments and publications; proceedings, actions, and convictions; and paid malpractice claims.
- Profiles for Oral and Maxillofacial Surgeons licensed by the Board of Dentistry: <https://www.dhp.virginia.gov/dentistry/profile/public/index.asp>. This site contains information similar to physician profiles.

- Commonwealth Calendar: <https://commonwealthcalendar.virginia.gov/>. This site includes the following information about Board and Committee meetings: name of entity meeting; date and time of meeting; location of meeting; links to agendas when available; links to minutes; staff contacts, accessibility information.
- Virginia Regulatory Town Hall: <https://townhall.virginia.gov/>. This site includes information on regulatory actions, including: notices of intent to amend regulations; proposed regulations; newly adopted regulations; public comment forums on proposed actions; comment forums on guidance document changes; information about meetings, including minutes and agendas; and instructions on how to file a petition for rulemaking with an agency.

Making a request for records from the Department of Health Professions

- You may request records by U.S. Mail, fax, 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.
- It may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives the Department a clear statement of what records you are requesting so that there is no misunderstanding over a verbal request. However, verbal FOIA requests will be responded to if you elect not to put your request in writing.
- Your request must identify the records you are seeking with “reasonable specificity.” The phrase “reasonable specificity” does not limit the volume or number of records you are requesting. Instead, it requires that you be specific enough that the Department 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 the Department or a specific Board within the Department, nor does it require the Department or a Board to create a record that does not already exist.
- You may choose to receive electronic records in any format used by the Department 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 email or on a computer disk, or to receive a printed copy of those records.
- If Department or Board staff have questions about your request, please cooperate with 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. FOIA requests are not adversarial, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

The following individuals within the Department are designated as the FOIA officers and are responsible to respond to FOIA requests as noted below:

<u>FOIA Officer & Contact email</u>	<u>Records</u>
Board of Audiology & Speech-Language Pathology Leslie Knachel, Executive Director AudBD@dhp.virginia.gov	All records associated with the Board of Audiology & Speech-Language Pathology
Board of Counseling Jaime Hoyle, Executive Director coun@dhp.virginia.gov	All records associated with the Board of Counseling
Board of Dentistry Jamie Sacksteder, Executive Director denbd@dhp.virginia.gov	All records associated with the Board of Dentistry
Board of Funeral Directors and Embalmers Corie Tillman Wolf, Executive Director fanbd@dhp.virginia.gov	All records associated with the Board of Funeral Directors and Embalmers
Board of Health Professions Leslie Knachel, Executive Director bhp@dhp.virginia.gov	All records associated with the Board of Health Professions
Board of Long-Term Care Administrators Corie Tillman Wolf, Executive Director ltc@dhp.virginia.gov	All records associated with the Board of Long-Term Care Administrators
Board of Medicine Jennifer Deschenes, Deputy Executive Director medbd@dhp.virginia.gov	All records associated with the Board of Medicine
Board of Nursing Jay Douglas, Executive Director nursebd@dhp.virginia.gov	All records associated with the Board of Nursing
Board of Optometry Leslie Knachel, Executive Director optbd@dhp.virginia.gov	All records associated with the Board of Optometry
Board of Pharmacy Caroline Juran, Executive Director pharmbd@dhp.virginia.gov	All records associated with the Board of Pharmacy
Board of Physical Therapy Corie Tillman Wolf, Executive Director ptboard@dhp.virginia.gov	All records associated with the Board of Physical Therapy
Board of Psychology Jaime Hoyle, Executive Director psy@dhp.virginia.gov	All records associated with the Board of Psychology
Board of Social Work Jaime Hoyle, Executive Director socialwork@dhp.virginia.gov	All records associated with the Board of Social Work
Board of Veterinary Medicine Leslie Knachel, Executive Director vetbd@dhp.virginia.gov	All records associated with the Board of Veterinary Medicine
DHP Enforcement Division Michelle Schmitz, Director enforcement.director@dhp.virginia.gov	All records of open investigations and all records of closed investigations concerning unlicensed practice

DHP Healthcare Workforce Data Center Yetty Shobo, Director hwdc@dhp.virginia.gov	All records associated with the Healthcare Workforce Data Center
DHP Health Practitioners' Monitoring Program (HPMP) Christina Buisset, HPMP Program Coordinator hpmp@dhp.virginia.gov	All records associated with HPMP
DHP Prescription Monitoring Program (PMP) Ashley Carter, Director pmp@dhp.virginia.gov	All records associated with PMP
Department of Health Professions (policies) Erin Barrett, Senior Policy Analyst Lisa Hahn, Chief Operating Officer foia@dhp.virginia.gov	All records associated with regulations and policies for the Department of Health Professions (DHP)

All of the individuals referenced above may be contacted at our main address:

9960 Mayland Drive
Suite 300
Henrico, Virginia 23233-1463

The Department's Responsibilities in Responding to Your Request

- The Department must respond to your request within five working days of receiving it. Day one is 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 the Department is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow the Department to ask you to provide your name and legal address.
- FOIA requires that the Department 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. 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 the Department 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.
- 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 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

You may have to pay for the records that you request from the Department. FOIA allows the Department to charge for the actual costs of responding to FOIA requests. Virginia Code § 2.2-3704(F) states that:

A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records . . . 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.

Actual costs may include staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. Actual costs cannot include general overhead costs.

You may request a cost estimate for supplying the records you request in advance. This will allow you to know about any costs upfront and give you an opportunity to modify your request in an attempt to lower the estimated costs if you wish.

If the Department estimates that it will cost more than \$200 to respond to your request, the Department may require you to pay a deposit before proceeding with the 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. Va. Code § 2.2-3704(H). Additionally, if the Department receives no response from you for 30 days following a cost estimate, the FOIA request is considered withdrawn. Va. Code § 2.2-3704(F).

If you owe the Department money from a previous FOIA request that has remained unpaid for more than 30 days, the Department may require payment of the past-due bill before it responds to your new FOIA request. Va. Code § 2.2-3704(I).

Commonly used exemptions

Certain statutory provisions, both within FOIA and within the Department's basic laws, allow the Department to withhold certain records from public disclosure.

Virginia Code § 54.1-2400.2 strictly prohibits the release of "any reports, information or records received and maintained by the Department of Health Professions or any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding." FOIA requests regularly include requests for information which the Department cannot release pursuant to this statute.

Exemptions contained within FOIA which the Department commonly uses include:

- Personnel records (Va. Code § 2.2-3705.1(1));
- Records subject to attorney-client privilege (Va. Code § 2.2-3705.1(2)) or attorney work product (Va. Code § 2.2-3705.1(3));
- Vendor proprietary information (Va. Code § 2.2-3705.1(6));
- Personal information as defined in Virginia Code § 2.2-3801, which includes electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body where the recipient has requested that the public body not disclose the personal information (Va. Code § 2.2-3705.1(10));
- Records related to the negotiation and award of a contract prior to a contract being awarded (Va. Code § 2.2-3705.1(12));
- Records of active investigation being conducted (Va. Code § 2.2-3705.3(2));
- Any tests or examinations used to license or certify individuals (Va. Code § 2.2-3705.1(4));
- Information required to be provided to the Department by certain licensees pursuant to Virginia Code § 54.1-2506.1 (Va. Code § 2.2-3705.5(8)); and
- Applications for examination or licensure, except when requested by the applicant (Va. Code § 2.2-3705.5(2)).

Additionally, basic laws of the Department exempt records of the Health Practitioners' Monitoring Program and the Virginia Prescription Monitoring Program from disclosure pursuant to FOIA requests. (*See* Va. Code §§ 54.1-2517(B), 54.1-2523(A).)

FOIA Council

The Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by email at foiacouncil@dls.virginia.gov, or by phone at (804) 698-1810 or toll free at 1-866-448-4100. Information about FOIA may be found at: <http://foiacouncil.dls.virginia.gov/>.