

CITY OF CHESAPEAKE, VIRGINIA

NUMBER: (1.08) 90.1

ADMINISTRATIVE REGULATION

EFFECTIVE DATE: 05/23/00

**SUBJECT: CITY MANAGER'S OFFICE
VIRGINIA FREEDOM OF INFORMATION ACT –
PUBLIC RECORDS**

SUPERSEDES: 07/01/89

I. INTRODUCTION

The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Therefore, the Virginia Freedom of Information Act was enacted by the General Assembly to ensure the people of the Commonwealth ready access to records in the custody of public officials, as well as free entry to meetings of public bodies in which the business of the people is being conducted.

II. PURPOSE

The Act requires the City to respond within five (5) working days of receiving a request for public records. This regulation is established in order to clarify departmental responsibility for responding to requests, while also establishing a consistent, time efficient method to be utilized when responding to requests. In addition, this regulation will provide departments with billing information necessary to fulfill certain types of requests.

III. RECORDS PROCEDURES

A. Definition of Public Records

All writings and recordings which consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, 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 employees, officers or agents in the transaction of public business.

B. Custodian of Records

Each department shall designate a custodian of records and a back-up person in the event the custodian is not available. The custodian of records is responsible for responding to records requests pursuant to this regulation and the Virginia Freedom of Information Act. The department head is responsible for ensuring that the custodian responds appropriately and that all requests are forwarded to the custodian. When there is any question about the proper response to a request, or if an exemption is to be claimed for all or any part of the records requested, the custodian may request assistance from the City Attorney's office.

Legal assistance should be requested from the City Attorney's Office as soon as possible, but not less than one day after the records request is made.

C. Requests

Requests for public records may be in writing, in person, by telephone or electronically transmitted, but they need not make specific reference to the Virginia Freedom of Information Act. The request must identify the requested records with reasonable specificity; if the request is unclear or non-routine the citizen may be asked to put the request in writing, or the request may be written down and read back to the requester for confirmation. There should be a written record of all requests for clarity and future confirmation if necessary. Also, the date of the request must be recorded in order to make an appropriate response within the time limitation.

A copy of all requests must be forwarded to the Deputy City Manager or Assistant City Manager supervising the receiving department not less than one day after the request is made. Deputy and Assistant City Managers may waive this requirement for certain types of routine requests (e.g., requests for copies of police accident reports).

D. Response

A response to a request for public records must be made within five (5) working days after receipt of the request. It is important to note the exact date of the request, since the failure to respond constitutes a denial of the request and violation of the Virginia Freedom of Information Act.

One of the following four responses must be made within the five (5) working day period:

1. The requested records will be provided.
2. The requested records will be entirely withheld because their release is prohibited by law or the City has exercised its discretion to withhold the records in accordance with the Virginia Freedom of Information Act. Such response shall (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific Code of Virginia section which authorizes the withholding of the records.
3. The requested records will be provided in part and withheld in part because the release of part of the records is prohibited by law or the City has exercised its discretion to withhold a portion of the records in accordance with the Virginia Freedom of Information Act. Such response shall (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of withheld records, the specific Code of Virginia section which authorizes the withholding of the records. When a portion of a requested

record is withheld, the City may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall be in writing and specify the conditions which make a response impossible. If the response is made within five working days, the City shall have an additional seven work days in which to provide one of the three preceding responses.

D. Billing

Reasonable charges may be made to the requester in order to recover the City's actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. Generally applicable charges are as follows:

1. Copy Charge

\$0.25 per copy

2. Personnel Time Charge

If requested records can be retrieved from departmental files and copied in less than fifteen (15) minutes, there will be no charge for personnel time. If fifteen (15) minutes or longer is required to search for, retrieve and copy requested records, a charge for personnel time is to be assessed.

The charge for personnel time shall be computed by determining the hourly rate of pay of City staff responding to the request and multiplying that rate by the number of hours, or portions thereof, spent on the response. Rates charged shall be appropriate for the work actually performed. For example, time spent making copies shall be charged at the pay rate for an office associate or similar position in the responding department, not at a professional pay rate.

3. Other charges

The City shall not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the City's general business. Questions concerning the appropriateness of charges other than those set forth in subsections (1) and (2) above shall be directed to the City Attorney's Office.

4. Advance Payment:

If the charges for producing the requested records are determined in advance to be likely to exceed \$200, the City may require that the requester agree to pay a

deposit not to exceed the amount of the advance determination before continuing to process the request. The deposit shall be credited toward the final cost of supplying the requested records. Until the requester responds to the City's request for agreement to pay the amount specified, the time limitations for responding are suspended.

E. Exemptions

The Virginia Freedom of Information Act does not prohibit the disclosure of any public record. However, it does list categories of records which are excluded from the general disclosure requirements. As a general practice, the City will claim the exemptions listed in the Virginia Freedom of Information Act because of the sound public policies behind such exemptions. At the time of the enactment of this regulation, there are 70 exemptions. Some examples are:

- Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution
- Personnel records
- Records recorded in or compiled exclusively for use in closed meetings of City Council, the Planning Commission and other boards and commissions
- Computer software developed for the City
- Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease
- Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed
- Written advice of the City Attorney, his deputies and assistants and any other records protected by the attorney-client privilege
- Working papers and correspondence of the Mayor and City Manager ("working papers" are defined as those records prepared by or for the Mayor or City Manager for his personal or deliberative use)

F. Other Laws

While claiming exemptions under the FOIA is discretionary, other laws prohibit disclosure of certain records except in very limited circumstances. These records include:

- Tax returns and other tax records that reveal information about the income or business of the subject

- Scholastic and medical records
- Court and probation records involving juveniles
- Records of social service agencies containing information about specific clients

The City Attorney's office should be consulted with any questions about laws which prohibit disclosure of certain types of records.

IV. ENFORCEMENT

The Virginia Freedom of Information Act is enforced by an action for injunction in either the general district or circuit court. If the court finds a violation of the Act, costs and attorney's fees from the public body could be awarded to the petitioner unless found unjust. It is important to note that a willful and knowing violation of the Act could result in a civil penalty for individuals between \$100 and \$1,000. Second or subsequent violations may result in individual civil penalties between \$500 and \$2,500.

John L. Pazour, City Manager

Date