

Rights & Responsibilities:

The Rights of Requesters

And the Responsibilities of the Town of Middleburg

Under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located in § 2.2-3700 et seq. of the Code of Virginia, guarantees 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 policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must 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 district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for records from the Town of Middleburg

- 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.
 - From a practical perspective, 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 us a clear statement of what records you are requesting so there is no misunderstanding over a verbal request. We cannot, however, refuse to respond to your FOIA request if you elect to not put it in writing.

- Your request must identify the records you are seeking with "reasonable specificity". This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting. Instead, it requires that you be specific enough so we can identify and locate the records 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 Town of Middleburg nor does it require the Town to create a record that does not exist.
- You may choose to receive electronic records in any format used by the Town 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 e-mail, on a computer disk, or as a printed copy of those records.
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records you are seeking or 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 your request with you to ensure that we understand what records you are seeking.

To request records from the Town of Middleburg, you may direct your request to Rhonda S. North, MMC, Town Clerk. She can be reached by phone at (540) 687-5152, via email at townclerk@middleburgva.gov, in person at 10 West Marshall Street, in writing at P. O. Box 187, Middleburg, Virginia 20118 or via fax at (540) 687-3804. You may also contact her with questions you have concerning requesting records from the Town. In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at foiacouncil@dls.virginia.gov, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

The Town of Middleburg's Responsibilities in Responding to Your Request

- The Town must respond to your request within five working days of receiving it. "Day One" is considered 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 Town 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 Town to require you to provide your name and legal address.

- FOIA requires that the Town 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 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; however, we must provide you with the remainder of the record. We must also 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 (we do not have the records you want). 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 Town 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 (7) additional working days to respond to your request, giving us a total of twelve (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 twelve (12) working 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

- A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. 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 as set forth in subsection F of § 2.2-3704 of the Code of Virginia.

- You may have to pay for the records that you request from the Town. The Town of Middleburg does not charge in the case of records that are less than five (5) pages and can be provided in less than five (5) minutes.
- The Town does not have a fixed charge for accessing or searching for requested records. Charges for accessing or searching for requested records are based on the hourly rate of the person searching for the records in question. To keep costs down, the Town attempts to use the lowest paid staff members capable of retrieving the requested records in responding to a request. However, for situations where a staff member is required to search through his or her own emails and files, the staff member will search for the requested records and the search charge will be based on that employee's hourly rate.
- If we estimate that it will cost more than two hundred dollars (\$200) to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your 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.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.
- If you owe us money from a previous FOIA request that has remained unpaid for more than thirty (30) days, the Town may require payment of the past-due bill before it will respond to your new FOIA request.

Types of records

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

- Personnel records concerning employees and officials of the Town of Middleburg
- Records of contracts which the Town has entered into
- General correspondence received by or sent by employees or officials of the Town of Middleburg
- Subject files created by departments of the Town of Middleburg

- Fiscal records related to the operation of the Town
- Permits issued
- Planning and Zoning files
- Police files
- Records of the Middleburg Town Council and other Town boards and commissions, including meeting agendas and minutes
- Property maintenance files
- Procurement records related to the operation of the Town
- Licensing records
- Property tax records
- Ordinances, proclamations and resolutions adopted by the Town Council of the Town of Middleburg
- Utility records, including billing, operations and maintenance records

If you are unsure whether the Town has the record(s) you seek, please contact Rhonda S. North, FOIA Officer, directly by phone at (540) 687-5152, by email at townclerk@middleburgva.gov, by fax at (540) 687-3804, in person at 10 W. Marshall Street, or by mail at P. O. Box 187, Middleburg, Virginia 20118.

Commonly used exemptions

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

- Personnel records (§ 2.2-3705.1(1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1(2) of the Code of Virginia) or attorney work product (§ 2.2-3705.1(3) of the Code of Virginia)
- Vendor proprietary information software (§ 2.2-3705.1(6) of the Code of Virginia)
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12) of the Code of Virginia)

- Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711 of the Code of Virginia (§ 2.2-3705.1(5) of the Code of Virginia)
- Those portions of records that contain account numbers or routing information for any credit card, debit card or other account with a financial institution of any person or public body (§ 2.2-3705.1(13) of the Code of Virginia)
- The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaint (§ 2.2-3705.3(9) of the Code of Virginia)
- Business tax and personal property tax returns held pursuant to §58.1-3 of the Code of Virginia (§ 2.2-3705.7(1) of the Code of Virginia)
- Working papers of the Mayor and/or Town Administrator provided they would not otherwise be open for inspection (§ 2.2-3705.7(2) of the Code of Virginia)
- Customer account information of a public utility, including the customer's name, service address and social security number, but excluding the amount of utility service provided and money paid for such service (§ 2.2-3705.7(7) of the Code of Virginia)
- Criminal incident information that would likely jeopardize an ongoing investigation or prosecution, the safety of an individual, cause a suspect to flee or result in the destruction of evidence (§ 2.2-3706(1) of the Code of Virginia)

Policy regarding the use of exemptions

- The general policy of the Town of Middleburg is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of the Town.
- The general policy of the Town is to invoke the contract negotiations exemption whenever it applies in order to protect the Town's bargaining position and negotiating strategy.
- The general policy of the Town is to invoke the attorney-client privilege or attorney work product privilege whenever it applies in order to protect the Town's legal strategy.
- The general policy of the Town is to invoke the vendor propriety information software exemption in order to protect ensure the security of confidential information held by the Town within its software.

- The general policy of the Town is to invoke the closed session exemption in order to protect the confidentiality of those being discussed in closed session or to protect the negotiating or litigating strategy of the Town.
- The general policy of the Town is to invoke the account information exemption, including customer account information, in order to protect the financial security of the Town and/or its customers.
- The general policy of the Town is to invoke the complainant information related to a zoning matter in order to protect the complaining party and to ensure that individuals are not discouraged from reporting of violations.
- The general policy of the Town is to invoke the business tax exemption in order to protect the financial confidentiality of our local businesses.
- The general policy of the Town is to invoke the working papers exemption as the final version of the document may be different than the initial draft version, creating misinformation if released too soon.
- The general policy of the Town is to invoke the criminal incident information exemption so as to not jeopardize an ongoing investigation or put an individual in harm's way.

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