

REQUESTS FOR PUBLIC RECORDS

The Virginia Freedom of Information Act (FOIA), located at §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. All requests for public records will be processed in accordance with this standard operating procedure.

I. PUBLIC RECORD REQUIREMENTS

A. Requests Covered by this Policy

Before making a FOIA request, a citizen may look to see if the public record of interest is already publicly available. Public information on a range of topics regarding Albemarle County Public Schools (“ACPS” or “School Division”) is readily available on the School Division’s and/or each school’s or department’s web site. Staff receiving requests for public records that are readily available in such a manner should direct the requesting citizen to these resources or provide it verbally or in print format as soon as possible, bearing in mind that a request for public records, once it becomes a FOIA request, must be fulfilled within five (5) work days.

When a citizen requests information that is not readily available or posted for public viewing and locating this information is a more complex process than school staff either have time or expertise to handle, they should report the request to the School Division’s FOIA Officer.

B. Scope of FOIA’s Public Record Requirements

As a public body, ACPS must provide Virginia citizens the opportunity to inspect and copy its public records, unless an exemption applies, or the disclosure is otherwise prohibited by law. FOIA does not require public bodies to create new public records, compile or summarize data, or provide pure information in response to any request. Rather, public bodies must make applicable, existing public records open for inspection and copying when those records have been identified with reasonable specificity.

Officers, employees, and members of the School Board who fail to provide public records as required by FOIA because they altered or destroyed the requested records with the intent to avoid the provisions of FOIA are subject to penalties in their individual capacity of up to \$100 per record altered or destroyed.

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 in 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. Records that are not prepared for or used in the transaction of public business are not public records.

A “public body” for purposes of this policy means the School Board, each department and school within the School Division, and all committees created by the School Board to

perform delegated duties of the School Board or to advise the School Board. In addition, any entity that receives its funding wholly or principally from the Commonwealth is considered a public body.

C. Certain Records Exempt from FOIA

All public records are presumed to be open, and may be withheld only if a specific, statutory exemption applies. Although FOIA provides numerous statutory exemptions, those most often relevant to the Division are the following:

1. Scholastic records containing information concerning identifiable individuals (Va. Code §2.2-3705.4). This exemption does not apply to the parent or legal guardian of a student or the student himself, if aged eighteen (18) years of age or older.
2. Personnel records containing information concerning identifiable individuals (§2.2-3705.1). This exemption does not apply to the individual who is the subject of the personnel records.
3. Closed meeting materials that have been recorded or compiled exclusively for use in a lawfully held closed meeting (§2.2-3705.1(5)).
4. Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12)).
5. Records subject to attorney-client privilege (§ 2.2-3705.1(2)) or attorney work product (§ 2.2-3705.1 (3)).
6. Vendor proprietary information software (§ 2.2-3705.1(6)).

Before denying any request for records based on a statutory exemption, employees must consult the School Board Attorney to ensure compliance with FOIA.

II. REQUESTS FOR PUBLIC RECORDS

A. Positions Responsible for FOIA Compliance

1. FOIA Officer. Pursuant to Virginia Code §2.2-3704.2, the Superintendent shall designate an individual to be the point of contact for members of the public requesting records, coordinate the School Division's compliance with FOIA, maintain a system for monitoring and archiving all requests received by the School Division, and to coordinate the preparation of responses to certain requests as described in section (a) below.
 - a. The FOIA Officer will coordinate the preparation of responses to all FOIA requests. With respect to such requests, the FOIA Officer is responsible for communicating with the requesting party ("requester"), coordinating the retrieval

of records from all affected departments, and preparing the School Division's response with assistance from the School Board Attorney as needed. All questions concerning legal compliance with FOIA should be referred to the FOIA Officer for consultation with the School Board Attorney.

- b. At each school, the principal/designee will promptly send the FOIA request to the FOIA Officer. Only the FOIA Officer will respond to FOIA requests.
- c. All other departments/employees receiving a FOIA request should ensure that the request is sent promptly to the FOIA Officer.

B. Format of Requests

1. Eligibility. Any Virginia citizen may request public records simply by asking for records by U.S. mail, fax, e-mail, in person, or over the phone. The requester need not mention FOIA or state that he or she is making a FOIA request. Virginia citizenship will be satisfied by providing a valid current residential or business address located in Virginia.
2. Written Requests. The requester will be asked, but not required, to put the request in writing, using the form created by the FOIA Officer. This allows the division to understand what records are being requested, and to track and maintain all requests. In the alternative, the receiving employee may complete a FOIA request form on behalf of the requester after obtaining all necessary information from the requester. If this alternative is chosen, the employee should confirm the accuracy of the request with the requester.
3. Reasonable Specificity. The request must identify the records being sought with "reasonable specificity." This does not mean that the requester must specify the volume, number, or location of the records, but simply that the request must be specific enough for the School Division to identify and locate the records.
4. Clarification. School Division staff should understand that a requester may not be required to disclose the reason for his or her request. Staff may, however, ask any questions needed to provide the requester the desired records, clarify the request, or attempt to reach a reasonable agreement about a response to a large request.

III. RESPONSES TO REQUESTS FOR PUBLIC RECORDS

A. Timeframe and Basic Requirements for Responses

1. Timeframe. ACPS must respond to a FOIA request within five (5) working days of receiving it. The five-day period does not include weekends or holidays. The five-day period begins on the first working day following the day the request is received by the employee and ends at the close of business on the fifth working day. Any time that elapses between the time the requester is notified of an advance cost

- determination pursuant to the procedures detailed below and the time the requester responds to that notice shall not be counted in calculating the five work days.
2. **One of Five Basic Responses Required.** By the fifth working day following receipt of a request, School Division staff must provide at least one of the following responses:
 - a) The records shall be made available to the requester for inspection, or copies thereof may be provided in lieu of inspection.
 - b) The requested records will be entirely withheld because their release is prohibited by law or because FOIA gives their custodian discretion to withhold them. A written explanation identifying with reasonable particularity the volume and subject matter of the withheld records and with respect to each category withheld, referencing the code section containing the specific applicable exemption(s), shall be included.
 - c) 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 custodian has exercised his discretion to withhold a portion of the records. A written explanation identifying with reasonable particularity the subject matter of the withheld portions and referencing, with respect to each category of withheld records, the specific code section(s) which authorize the withholding of records, shall be included.
 - d) The requested records cannot be found or do not exist (the School Division does not have the records requested). However, if staff knows that another public body does have the requested records, contact information for the other public body must be included in the response.
 - e) The School Division cannot determine the status of the records within the five-day period, or it is practically impossible to provide the records within the five-day period. If so, staff shall describe briefly the specific conditions which make a response within the five-day period impossible. In addition, within seven (7) additional days following the provision of this response, the School Division must provide one of the substantive responses in paragraphs (a) through (d) above.
 3. **Other Agreements.** The above timing requirements will not apply if the School Division employee and the requester reach an agreement that the records will be provided later than five (5) working days after receipt of the request. In such cases, staff must document the agreed upon date for providing the records.

B. Format and Provision of Records

1. **Provision of Records (Not Electronic Records).** Records will be made available for inspection at the central office during regular business hours. If the requester wishes to have a copy of the records, the FOIA Officer will make the copies available for pick-up at the central office during regular business hours or, if the records are not voluminous, mail them to the requester by first-class mail.

2. Provision of Records (Electronic Records). Individuals may request copies of any nonexempt public records maintained in an electronic format by the division. Such records shall be reproduced in any tangible medium or format identified by the requester that is regularly used in the ordinary course of business by the ACPS, including posting the records on a website, burning them to a CD, or delivering the records through an electronic mail address provided by the requester.

The requester may choose to receive electronic records in any format used by ACPS in the regular course of business. For example, if the requester is requesting records maintained in an Excel database, the requester may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.

C. Costs for Providing Records

1. Basis for Costs. Except with regard to scholastic records requested pursuant to subdivision A 1 of Virginia Code § 2.2-3705.4 that must be made available for inspection pursuant to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor student or by a student who is eighteen (18) years of age or older, FOIA allows public bodies to make reasonable charges not to exceed the actual costs of responding to FOIA requests in order to ensure that taxpayer funds are used appropriately for public purposes, and makes all reasonable efforts to supply the requested records at the lowest possible cost. Specifically, FOIA permits charging requesters for the staff time spent “accessing, duplicating, supplying, or searching for the requested records,” and for the costs directly related to supplying the records, such as photocopying and CD costs. Attorney review time may not be charged. In addition, the School Division may not 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.”
2. Particular Charges. Generally, there will be no charge for simply viewing or inspecting an official document. In all other instances, the following costs will apply to the provision of records:
 - a. Copies of documents and printouts from electronic documents: Five (5) pages or fewer: no charge. Six (6) or more pages: per page charge based on the estimated actual cost of reproduction/printing per page as determined periodically by the FOIA Officer.
 - b. Staff time: When fifteen (15) minutes or more time is required to access, duplicate, supply, or search for the requested public records, the requester will be charged for the actual time spent by division staff calculated in fifteen (15) - minute increments. For example, a response that requires fifteen (15) minutes of staff time to retrieve and photocopy documents will incur a charge for fifteen (15)

minutes, and a response that requires one (1) hour of staff time will incur a charge for one (1) hour. These charges will reflect the employee's base hourly rate unless the request had to be completed by an employee working overtime, in which case the charge will reflect one and a half times the employee's base hourly rate. For requests that require less than fifteen (15) minutes of staff time, the requester will not be charged for staff time.

- c. Materials: For responses provided in an electronic medium, the division will charge the cost of the medium (i.e. CD, DVD, etc.).
3. Estimates and Deposits. Prior to conducting a search for records, ACPS notifies the requestor in writing that it may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquires of the requestor whether the requestor would like to request a cost estimate in advance of supplying the requested records. A requestor may request that ACPS estimate in advance the charges for supplying the records requested. This will allow the requestor to know about any costs upfront, or give the requestor the opportunity to modify the requests in an attempt to lower the estimated costs. Any costs incurred by ACPS in estimating the cost of supplying the requested records will be applied toward the overall charges to be paid by the requestor for the supplying of such requested records.
 4. If the requester has asked for an advance determination of the cost, or if the cost is expected to exceed \$200.00, ACPS 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. No further action shall be taken until the requester responds, and the requester must pay the estimated amount before any further processing of the request is performed. If money is owed from a previous FOIA request that has remained unpaid for more than thirty (30) days, the School Division may require payment of the past-due bill before it will respond to a new FOIA request.

Adopted: March 28, 2013
 Amended: September 10, 2015; September 8, 2016; September 18, 2018; April 16, 2020; August 25, 2022
 Equity Review: April 16, 2020

Legal Ref.: Virginia Code §2.2-3704, 2.2-3704.01, 2.2-3704.1, 2.2-3704.2.

Cross Ref.: JO, *Student Records*
 KB, *Public Information Program*

REQUEST FOR PUBLIC RECORDS

Name _____

Address _____

E-mail address _____

Phone _____

I am a (check one):

- Citizen of the Commonwealth of Virginia
- Member of the Press referenced in Va. Code §2.2-3704
News Organization _____

Requesters may be asked to provide verification that they are citizens of the Commonwealth or a member of the press referenced in Va. Code § 2.2-3704.

STAFF USE ONLY

Date Request Received: _____

Request was made (check one)

- by requester on this form
- by telephone
- in writing other than on form
(attach original request)

Date Response Sent: _____

(attach copy)

 Identification Verified

Type: _____

Number: _____

 Itemized Cost Estimate Attached

I am requesting access to the following records (please be as specific as possible, and attach additional paper if necessary):

Reasonable costs may be assessed in connection with this request. If the costs associated with this request are expected to exceed \$200, the requestor will be asked to pay the estimated costs before the request is processed.

In addition, the requestor may ask for an advance determination of the cost of the request. Please indicate here if you would like an advance determination of cost. Yes ___ No ___

If you are requesting copies, please specify the format in which you would like to receive them. BLANK school division will provide the record(s) in the requested format if that medium is used by it in the regular course of its business.

Specify format desired (if available):

- Photocopies E-mail (give address): _____
- Website posting Other (please specify): _____

Signature_____
Date

RETURN COMPLETED FORM TO:
ALBEMARLE COUNTY PUBLIC SCHOOLS
401 MCINTIRE ROAD, CHARLOTTESVILLE, VA 22902

**RECORD OF INSPECTION and/or
DELIVERY OF COPIES**

Inspection of Public Records

Date _____ Time In _____ Time Out _____

Person Inspecting Records

Name Signature

Staff Person in Attendance

Name Signature

Records Reviewed (describe)

Copies of Public Records

| Record | No. Pages | Delivery Method (mail, e-mail, etc.) | Date of Delivery | Cost (if any) | Date and Method of Payment |
|--------|-----------|--|------------------|---------------|----------------------------------|
|--------|-----------|--|------------------|---------------|----------------------------------|

Staff Person Providing Copies _____
Name Signature