

JMRL Policy: Section 1.8

FOIA Rights & Responsibilities: The Rights of Requesters and the Responsibilities of Jefferson-Madison Regional Library under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located § 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 Jefferson-Madison Regional Library

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.

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- o 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 the library a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, the library cannot 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 that the library 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 library, nor does it require the library to create a record that does not exist.

You may choose to receive electronic records in any format used by the library in the regular course of business.

- o For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records

If the library has questions about your request, please cooperate with staff's 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. Making a FOIA request is not an adversarial process, but the library may need to discuss your request with you to ensure it is understood what records you are seeking.

To request records from Jefferson-Madison Regional Library, you may contact the Library Director at halliday@jmrl.org or 434-979-7151, extension 6670. You may also contact the Library Director with questions you have concerning requesting records from the library.

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.

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Jefferson-Madison Regional Library's Responsibilities in Responding to Your Request

The library 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 library is irrelevant, and you do not have to state why you want the records before the library responds to your request. FOIA does, however, allow the library to require you to provide your name and legal address.

FOIA requires that the library make one of the following responses to your request within the five-day time period:

- 1) The library provides you with the records that you have requested in their entirety.
- 2) The library withholds 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, the library 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 the library to withhold the records.
- 3) The library provides some of the records that you have requested, but withholds other records. The library cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the library may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. The library 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) The library informs you in writing that the requested records cannot be found or do not exist (the library does not have the records you want). However, if the library knows that another public body has the requested records, the library must include contact information for the other public body in the response to you.
- 5) If it is practically impossible for the library to respond to your request within the five-day period, the library must state this in writing, explaining the conditions that make the response

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impossible. This will allow seven additional working days to respond to your request, providing a total of 12 working days to respond to your request.

If you make a request for a very large number of records, and library staff cannot provide the records to you within 12 working days without disrupting other organizational responsibilities, the library may petition the court for additional time to respond to your request. However, FOIA requires that the library make a reasonable effort to reach an agreement with you concerning the production of the records before going 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 library. FOIA allows the library to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.

If library staff estimates that it will cost more than \$200 to respond to your request, you will be required to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that the library has to respond to your request does not include the time between when the deposit is requested and when you respond.

You may request that library staff 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.

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If you owe the library money from a previous FOIA request that has remained unpaid for more than 30 days, the library 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 library:

- Records of Library Board actions, such as contracts, resolutions, and minutes
- Meeting minutes from Library Board committee meetings
- Fiscal records
- Staff reports and correspondence

If you are unsure whether the library has the record(s) you seek, please contact the Library Director at halliday@jmrl.org or 434-979-7151 extension 6670.

Commonly used exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure. The library 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)) or attorney work product (§ 2.2-3705.1 (3))

- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))

For a full list of exemptions, see Virginia Code § 2.2-3705.1 et seq.

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