

TAZEWELL COUNTY BOARD OF SUPERVISORS
FOIA Rights, Policies, and Procedures
STATEMENT OF RESIDENTS' RIGHTS
TO PUBLIC INFORMATION
UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Act

The Virginia Freedom of Information Act, § 2.2-3700 through § 2.2-3714 of the Code of Virginia, was established to make government entities throughout the Commonwealth of Virginia more open and to make government information more accessible to the public.

The Virginia Freedom of Information Act ("FOIA") is the primary state law governing citizen access to public records and entry to meetings of public bodies. FOIA guarantees residents of the Commonwealth of Virginia and representatives of the media access to public records held by public bodies, public officials, and public employees. FOIA also guarantees that public business is transacted in forums which are open to the public at places, dates and times of which the public is given notice.

FOIA gives Virginia Residents the Right to:

- Request to inspect or receive copies of public records, or both.
- Request that any charges for the requested records be estimated in advance.
- File a petition in district or circuit court to compel compliance with FOIA if they believe that their FOIA rights have been violated.
- Attend Public Meetings where public business is transacted.
- Speak at public hearings where public bodies are considering adopting certain ordinances, rules or regulations as required by other Virginia Law.

What is a Public Record under FOIA?

A public record is a 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 owned or prepared 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. 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.

How Do I Request Public Records?

FOIA requires that public records be made available to residents and the media for copying and/or inspection. FOIA refers to records that are in existence and **does not require** Tazewell County to create records. However, Tazewell County may abstract and summarize records, by agreement with the requestor. Agencies are under no obligation to extend benefits of FOIA to requests to individuals and media bodies residing outside of Virginia.

FOIA requests do not need to include the word “FOIA”, but all requests must include the name and address of the requestor and the request must be reasonably specific.

- Residents can make a request via mail, fax, e-mail, in person, or over the phone. FOIA does not require that requests be in writing, nor does the request need to specifically state that you are requesting records under FOIA. The requester does not have to state any reason for the request. But County personnel may have a better understanding of the documents containing the information the requester needs if the requester discloses generally what information they want.

For convenience, a FOIA request form is available on the County’s website. From a practical perspective, it may be helpful to put the request in writing. This creates a record of the request for the requestor and the County. A clear statement of the request in writing may avoid misunderstandings. It also gives the requester documentation as to when the request was made and what was requested, in the event the requester later believes the County did not comply with the request in a

timely fashion. Nevertheless, the County will respond to FOIA requests if the requester elects to not put it in writing.

Note, the County's policy is that a verbal request to a County employee who is off duty and not on county property at the time of the request is not considered a FOIA request. Please contact County employees during business hours on their business emails or telephones and not their personal, private emails or phones. The County also does not consider texts, Facebook messages or other electronic messages sent to employee's personal phones or social media pages to be FOIA requests.

- Requests must identify the records being sought with "reasonable specificity" This is a common-sense standard. It does not refer to or limit the volume or number of records being requested; instead, it requires that the requester be specific enough so County staff can identify and locate the records requested.
- Requests must ask for existing records or documents. FOIA gives residents a right to inspect or copy public records; it does not apply to a situation where the resident is asking general questions about the work of the County or any department; nor does it require the County to create a record that does not exist or research statistics which are not already compiled.
- Residents can request to receive documents electronically. For example, if the resident requests records maintained in an Excel database, they may request to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records. The County will make efforts to oblige such a request to the extent reasonably practicable. However, FOIA does not require the County to construct spreadsheets or databases that do not already exist simply to satisfy the requester's preferences or to convert such electronic information into formats not readily available on the County's computers.
- Residents can direct requests to the department that is the custodian of the record or to the County Administrator who is the County's FOIA Officer.

Tazewell County FOIA Officer – C. Eric Young

Contact information:

**Address: 197 Main Street
Tazewell, VA 24651
(276) 385-1200
Email: eyoung@tazewellcounty.org**

Responses to FOIA Requests

You should receive a response to your request within five working days. The day after the County receives the request is considered the first day of the maximum five-working-day response period. The five-day period does not include weekends or holidays.

FOIA outlines the five permissible responses to a FOIA request. If a request is being denied, or records are not being provided according to the request, the County must respond in writing. You should either receive the requested records or one of the following responses within five working days of making your request:

- The requested records are being provided and are enclosed.
- The requested records are being provided in part and withheld in part because the release of part of the record is prohibited by law. The law must be properly cited in the response and include the Virginia Code Section exemption.
- It is not practically possible to produce the records within five working days and we will need to invoke an extension. – An extension notification must be made in writing. This extension must be made within the five day response time-frame, and will add an additional seven working days to the response time, totaling 12 working days.
- The requested records are being entirely withheld because their release is prohibited by law or Tazewell County has exercised its discretion to withhold the records in accordance with FOIA. The law must be properly cited in the response and include the Virginia Code Section exempting the records from disclosure.
- The requested records could not be found or do not exist.

If a request is made for a very large number of records, and FOIA Officer feels that the records cannot be provided within 12 working days without disrupting other organizational responsibilities, the County may request an extension of time and notify the requestor of such delay. Further, the County may petition the court for additional time to respond to the request. However, FOIA requires that the County make a reasonable effort to reach an agreement with the requestor concerning the production of the records before going to court to ask for more time.

To Whom Do I Make my Request?

Eric Young, the County Administrator, is the County's FOIA Official. You should direct all FOIA requests to him at:

If By Mail:

C. Eric Young
County Administrator
197 Main Street
Tazewell, Virginia 24651

If By Email:

eyoung@tazewellcounty.org

If By Phone:

276-385-1208

Please be prepared to provide your name, address, and telephone number so that we may be sure to get the requested records to you.

YOU MAY BE CHARGED FOR YOUR RECORDS REQUEST

FOIA allows local government agencies to charge for requested records, yet charging for records is not mandatory. Charges must be fair and may not include extraneous or surplus fees unrelated to the production of the records.

With regard to the cost of providing records, §2.2-3704 of the Code of Virginia provides as follows:

F. 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. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall

not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$ 200, the public body may, before continuing to process the request, require the requester to agree to payment of 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. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

Tazewell County assesses a reasonable charge for the actual costs incurred in accessing, duplicating, supplying, or searching for requested records (excludes time spent redacting information). It is the goal of Tazewell County to keep production costs as low as possible. Residents and members of the media may request an estimate of the cost of supplying the requested records in advance of the staff searching for and duplicating the records.

Tazewell County will charge for the labor of the County Employee is locating the requested records and the following:

- Hard Copies are \$0.25 per page, which includes the employee's labor making the copies.

- Electronic records forwarded by email are \$0.25 per page emailed and the employee's labor to send the email.

- Copies of records saved to a thumb drive or discs at the requester's request will be the cost of the drive or disc and the labor of the employee to transfer the records to the drive or disc.

Tazewell County also will charge for postage.

If the estimated cost is over \$200 — An estimate of charges will be explained to the requestor prior to staff starting the FOIA request response. If it is estimated that the cost to produce documents will exceed \$200, Tazewell County will request at least a 50% deposit prior to performing the work. Tazewell County reserves the right to request a deposit for the entire estimated cost for producing the FOIA request response if desired. The deposit will be applied to the total bill upon completion of the FOIA request. The requestor shall receive a notice of the costs at the time the information requested is produced. If the remaining balance is not paid within 30 days thereafter, the requestor shall not be provided any further information until payment in full has been received.

The charge for most responses is less than Ten Dollars. If the estimated cost is greater than \$25.00 County staff will provide an estimate of such costs in advance.

What Are Public Meetings under FOIA?

All meetings of all public bodies, as defined in FOIA, as well as any meetings of a public body's committees or subcommittees are required to be open meetings, subject to certain exceptions spelled out in the Act. An open meeting is a meeting open for members of the public to attend. The right to attend a public meeting does not mean the public will have the right to speak at the meeting. Most public meetings in Tazewell County include a time set aside for public comment, during which the public may speak about their concerns. However, some meetings are special meetings called to address specific issues or business. Those meetings may or may not include a time for public comment. Nonetheless, the public is allowed to attend and observe all "meetings".

Under FOIA, a "meeting" is a gathering of at least three members of a public body for the purposes of discussing or transacting public business, or a gathering of a quorum of the public body if the quorum is less than three if they are present for the purpose of discussing or transacting public business. Members of the public

body attending public events held for purposes other than the discussion of public business by them such as sporting events, parades, funerals, and other common social gatherings does not constitute a meeting, unless the members actually do discuss public business at such event.

A gathering of public employees is **not** a "meeting" under FOIA. A meeting including one or two members of a public body and public employees also is not a public meeting, unless two members are present and two members constitutes a quorum of the public body.

How Can Public Bodies meet behind closed doors and exclude the public?

During the course of a public meeting, a public body may go into a closed meeting or "executive session" to discuss certain specific types of matters set forth in FOIA. Only members of the public body and those whom they invite are permitted to attend closed or executive sessions. Matters that may be discussed in executive session include contract negotiations, personnel issues, consultation with legal counsel, and other circumstances listed in the Act, where if held publicly the discussions could compromise the public's interests or violate the privacy rights of individuals.

To meet in a closed session, the public body must follow the specific procedures set forth in FOIA. The public body must notify the public of the issues to be discussed and may only discuss those issues. The public body may not vote in closed or executive session and may only vote after returning to public session. Upon return to public session the public body must vote to certify that such closed meeting included only discussions of the issues identified before entering the closed session.

FOIA permits members of the public to photograph or record (audio, visual, or audio-visual) public meetings. It also permits public bodies to adopt reasonable rules concerning the use of cameras and recorders, designed to prevent disruption.

Are there records of public meetings?

Public bodies maintain records of public meetings, including minutes. The minutes and any other recordings of public meetings made by the public body are a public record and available to the Public under FOIA.

It is Tazewell County's policy to make audio recordings of Board of Supervisors meetings and the meetings of some authorities. Audio recordings are not generally made of Committee or Subcommittee meetings. Minutes are kept of Committee and Subcommittee meetings only where action is taken by motions and voting.

When do Boards and Committees Meet?

The regular meeting dates and times of the Board of Supervisors, its Authorities, and its Committees are available either online or by calling the County Administrator's Office at 276-385-1322. Some Committees, such as the personnel committee, do meet regularly and only meet when necessary. Specially called meetings will be advertised in a Newspaper having general circulation in the County. The primary newspaper for special meeting advertisements is the Clinch Valley or Richlands News Press. However, under urgent circumstances meetings may be advertised in the Bluefield Daily Telegraph because it is a daily newspaper and its publication dates may all the County to hold the meeting more quickly and comply with the notice requirements of FOIA. You may ask to be included in the list of media personnel who receive individual notification of special meeting dates and times.

Are there accommodations for Americans with Disabilities at Public Meetings?

Meetings of the Tazewell County Board of Supervisors are held in the County Administration Building, which is ADA compliant. The handicapped parking space for the County Administration Building is on the south side of the building adjacent to the Courthouse parking lot. The building entrance located immediately in front of the handicapped parking space is the ADA compliant entrance. In the bottom floor lobby the elevator is on the right just past the restrooms. Board meetings and most committee meetings are held on the first floor (Main Street Level); exiting the elevator this would be on the right through the double doors. Most records are kept in the County Administration building on the Second floor accessed from the same elevator.

In compliance with the Americans with Disabilities Act, if special assistance is needed to attend a meeting of the Tazewell County Board of Supervisors, please contact the County Administrator's office at 276-385-1322, or 276-385-1208, or by e-mail susan.jewell@tazewellcounty.org.

If you are physically disabled and need assistance to attend a meeting of the Board of Supervisors a notification of five (5) working days prior to the meeting will enable the County Administrator's office to make reasonable arrangements to ensure accessibility to the meeting.

If I have questions about my FOIA request, whom do I call?

The Tazewell County Attorney's Office provides FOIA counsel for the Board of Supervisors and its Authorities and agencies. If you have a question or concern about how your FOIA request was handled by Tazewell County, you may contact:

Chase Collins, Tazewell County Attorney
Tazewell County Attorney's Office
197 Main Street
Tazewell, Virginia

or

By Phone at 276-385-1208

or

By Email at chase.collins@tazewellcounty.org

Also, the Virginia FOIA Council is a state agency, with the expertise to help resolve disputes of Freedom of Information Act issues. The FOIA Council answers questions from private citizens, state and local public officials, and the media about access to public records and meetings.

By issuing advisory opinions, whether oral or written, the FOIA Council offers assistance to resolve disputes by clarifying what the law requires and to guide future practices. The FOIA Council has no authority to mediate disagreements, but may be called upon as a resource to offer solutions to resolve FOIA disputes. As part of its statutory duties set forth at § 30-179 of the Code of Virginia, the Freedom of Information Advisory Council is charged with providing opinions about the application and interpretation of Virginia's Freedom of Information Act, conducting FOIA training seminars, and publishing educational materials.

TAZEWELL COUNTY BOARD OF SUPERVISORS FOIA PROCEDURES

The Board adopts the following procedures for processing and handling FOIA claims.

1. FOIA Officer

The Board designates the County Administrator or her designee as the County's FOIA Officer. The FOIA Officer also serves as the Public Information Officer whose responsibilities include, but are not limited to, coordinating and ensuring proper response to requests for public records issued to Tazewell County and its employees. All “non-routine” FOIA requests shall be handled by the FOIA Officer. Upon receipt of a FOIA request, the FOIA Officer provides a proper response in accordance with the requirements of the Act and this policy.

The FOIA Officer is required to attend training from the Virginia Freedom of Information Advisory Council.

2. Staff Responsibilities

All Tazewell County employees have a responsibility to comply with FOIA. The general role and responsibilities of the employee are outlined in this section as specified in the county ordinance:

Staff/Custodian of Records – Certain Employees will be notified that they are records custodians who may respond to certain "routine" requests without consultation with the FOIA Officer. For “routine” requests for information, custodians who receive a request for information shall ensure that it is promptly and properly produced to the requester. All “non-routine” FOIA requests shall promptly be routed to the FOIA Officer. If a records custodian has any doubt as to whether a request is or is not routine, the custodian should forward the request to the FOIA Official.

Staff/Non Custodian of Records--Employees who are not custodians of records should not produce records for any requesters. Such employees who receive a records request from a member of the public should communicate that request to their Department Head or the FOIA Officer as soon as possible.

3. County Attorney

Upon the request of the FOIA Officer, the County Attorney shall provide legal advice to the FOIA Officer and shall make recommendations as to whether documents should, as a matter of law, be released pursuant to FOIA.

The FOIA Officer may release records which the Act permits to be withheld under a discretionary exemption with consultation from Board.

If the FOIA Officer and the County Attorney do not agree regarding the exercise of the discretionary exemption, the FOIA Officer may proceed only after consultation with the Board.

If the FOIA Officer and County Attorney do not agree regarding whether a requested record must be released, the County Attorney may proceed to release the record in question only after consultation with the Board and FOIA Officer together. Prior to such consultation the County Attorney will obtain an opinion from the FOIA Council.

The County Attorney will update the FOIA Officer, County Employees, and the Board from time to time regarding any changes in FOIA law.

4. Records to be Presented to FOIA Officer

With the exception of records excluded as Work Product or Attorney Client Privilege, which are held by the Board and the County Attorney, under no circumstances shall any documents be withheld from the FOIA Officer, the County Attorney, or the County Administrator.

Willful withholding of public records from the FOIA Officer or the County Attorney or County Administrator by a County Employee may be a grounds for disciplinary action up to and including termination.

5. Role of County Employees in FOIA

Each Tazewell County Employee has a role in adhering to FOIA and the operations of Tazewell County. If an employee is asked for public records at any place or at any time during their work hours, and they are not able to provide them, it is the responsibility of the employee to notify their Department Head or the FOIA Officer of the request.

6. Department Heads

Departmental Heads are responsible for determining whether a records request is routine or non-routine. If there is any doubt as to whether a request is routine or non-routine the Department Head should forward the request to the FOIA Officer for immediate action. It is imperative that the Department Head and the FOIA Officer respond to the requests efficiently and timely.

The Department Head shall produce the requested records to the FOIA Officer as soon as possible. If the Department Head believes production of the records, whether routine or non-routine, will significantly disrupt the Department's operations, the Department Head shall notify the FOIA Officer immediately.

If the Department Head believes that information from records should be redacted, the Departmental Head must discuss this with the FOIA Officer, who will determine appropriate redactions.

7. Procedures for Non-Routine Requests

Based on the subject of the record requested, the FOIA Officer shall determine (1) whether there is any policy reason for withholding the requested records. The FOIA Officer shall not discriminate against any specific requester in determining whether there is a policy reason for not disclosing the request; except that requesters who have an outstanding balance due from pervious requests may be denied their request until such outstanding balance is paid.

Should the FOIA Officer believe that there is a policy reason for not disclosing the record she shall consult with the County Attorney to determine whether any of the exemptions to disclosure are applicable.

If the County Attorney and FOIA Officer agree that an exemption is applicable, the FOIA Officer shall, in consultation with the Chairman of the Board, exercise the exemption. The County Attorney shall write the requester advising that the exemption is being exercised.

If the FOIA Officer determines that there is no policy reason to withhold the information she shall release the information in accordance with the requirements of the Act. If the FOIA Officer needs additional time to respond for any of the reasons stated in the Act, she may send a letter requesting more time per the Act. However, the FOIA Officer shall not unnecessarily delay release of the records requested.

8. Requests to review records

In the event that the requestor makes a FOIA request to review records, the department file or documents will be submitted to the FOIA Officer. The FOIA Officer will review the records and notify the requestor that the records are available for inspection and copying.

9. Routine Requests Defined

Department Heads and the FOIA Officer shall collaborate in determining which documents are routinely produced for the public by their Department. Those Documents will be listed and the list will be provided to the Staff Custodian of Records within that Department. If a Department does not have a designated Custodian of Records then the FOIA Officer shall be deemed the custodian of records for that department.

10. Training and Compliance Monitoring

The FOIA Officer shall advise County Employees who are Staff/Records custodians of their responsibilities pursuant to this policy.

Department Heads, the FOIA Officer, and the County Attorney shall attend periodic training regarding the County's FOIA responsibilities.

11. Additional Policies and Amendments

The County Administrator may amend and add to this FOIA policy from time to time to maintain compliance with the Act or improve efficiency. Except, however, that provisions requiring the consent of the County Attorney and Board to withhold records from disclosure may not be amended without Board approval. Likewise, provisions requiring Board approval to produce records which the FOIA Officer or the County Attorney believe should be withheld pursuant to an exemption shall not be amended without Board approval.