

**A Resolution Adopting
Virginia's First Regional Industrial Facility Authority
Freedom of Information Act Policy**

WHEREAS, Virginia's First Regional Industrial Facility Authority ("VFRIFA" or "Authority"), is a body politic, as set forth in Chapter 64 of the Code of Virginia, 1950, as amended; and

WHEREAS, the Virginia Freedom of Information Act (FOIA), § 2.2-3700 et seq. of the Code of Virginia of 1950, as amended (Virginia Code), is the state law governing and guaranteeing access by citizens of Virginia, and representatives of the media, to public records and to meetings of public bodies, as defined in the act; and

WHEREAS, FOIA provides that, with some specific exemptions and exceptions, all meetings of public bodies shall be open to the public and all public records open for public inspection; and

WHEREAS, all public meetings and records are presumed open unless an exemption is properly invoked; and

WHEREAS, VFRIFA complies with the Virginia FOIA; and

WHEREAS, the attached policy provides information on how to make a FOIA request, citizen rights and responsibilities, and VFRIFA's responsibilities in responding to a request for information; and

WHEREAS, VFRIFA shall comply with all applicable portions of the Virginia Freedom of Information Act.

NOW, THEREFORE, BE IT RESOLVED that the attached Freedom of Information Act Policy is hereby adopted and shall take effect immediately upon passage.

Approved: June 17, 2015

**Virginia's First Regional Industrial Facility Authority
Freedom of Information Act Policy
Adopted June 17, 2015**

Section 1: Title

This Policy shall be known as the Virginia's First Regional Industrial Facility Authority Freedom of Information Act Policy.

Section 2: Public Record

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 purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this purpose, 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.

Section 3: FOIA Rights of Citizens Requesting Information

- A. Citizens have the right to request to inspect or receive copies of public records, or both.
- B. Citizens have the right to request that any charges for the requested records be estimated in advance.
- C. If a citizen believes that his/her FOIA rights have been violated, he/she may file a petition in district or circuit court to compel compliance with FOIA.
- D. In addition, the Freedom of Information Advisory Council is available to answer any questions about FOIA. The Council may be contacted by e-mail at foiacouncil@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

Section 4: Making a Request for Records from Virginia's First Regional Industrial Facility Authority (VFRIFA)

A request for records may be made in writing (by U.S. Mail, fax, e-mail, or in person) or verbally (in person or over the phone). FOIA does not require that the request be in writing, nor does the request need to specifically state that it is a request being made for records under FOIA.

VFRIFA encourages citizens to make the request in writing. For practical reasons, it may be helpful to both parties by creating a record of the request and make it clear exactly what records are being requested. However, VFRIFA will not refuse to respond to a FOIA request if it is not put in writing.

The request 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 request be specific enough for VFRIFA staff to identify and locate the records.

The request must ask for existing records or documents. FOIA requests are related to tangible records; it does not apply to general questions or require the creation of records that do not exist. The request shall specify preferred record format, either paper or electronic (either via email or on a CD).

If there are any questions about the request, VFRIFA will attempt to clarify in order to provide the desired information within the five days required by law or to attempt to reach a reasonable agreement about a response to a large request.

To request records from VFRIFA, a citizen may direct the request to the VFRIFA Executive Director or staff. Requests in writing or in person should be made at 6580 Valley Center Drive, Suite 124, Radford, Virginia 24141 and by phone at 540.639.9313. Emailed requests should be sent to cstraight@nrvc.org or dwilson@pulaskicounty.org.

Section 5: VFRIFA's Responsibilities in Responding to the Request

VFRIFA must respond to the request within five business days of receiving it. "Day One" is considered the day after the request is received. The five-day period does not include weekends or holidays.

The reason behind the request for public records from VFRIFA is irrelevant, and the request does not have to state why the records are being sought before VFRIFA responds to the request. FOIA does, however, allow VFRIFA to ask for the name and legal address of the person making the request.

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

- A. VFRIFA provides the records that have been requested in their entirety.
- B. VFRIFA withholds all of the records that have been requested, because all of the records are subject to a specific statutory exemption. If all of the records are being

withheld, VFRIFA must send 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 Virginia Code that allows VFRIFA to withhold the records.

- C. VFRIFA provides some of the records that have been requested, but withhold other records. VFRIFA cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, VFRIFA may redact the portion of the record that may be withheld, and then provide the remainder of the record. VFRIFA must provide a written response stating the specific section of the Virginia Code that allows portions of the requested records to be withheld.
- D. VFRIFA informs the citizen in writing that the requested records cannot be found or do not exist. However, if VFRIFA knows that another public body has the requested records, the other public body's contact information must be provided to the citizen.
- E. If it is practically impossible for VFRIFA to respond to the request within the five-day period, this must be stated in writing, explaining the conditions that make the response impossible. This will allow VFRIFA seven additional working days to respond to the request, making a total of 12 working days to respond to the request.
- F. If the request is for a very large number of records, and VFRIFA feels that it cannot provide the records within 12 working days without disrupting other organizational responsibilities, VFRIFA may petition the court for additional time to respond to the request. However, FOIA requires that VFRIFA make a reasonable effort to reach an agreement with the citizen making the request concerning the production of the records before going to court to ask for more time.

Section 6: Costs

There may be costs associated with the records being requested from VFRIFA. FOIA allows VFRIFA to charge for the actual costs of responding to FOIA requests.

"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."

This would include items such as 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 it is estimated that the costs will exceed \$200 to respond to a request, VFRIFA may require a deposit equal to the estimated cost to be paid prior to proceeding with the request.

The five days that VFRIFA has to respond to the request does not include the time between when a deposit is requested and when a response is provided. A request can be made that VFRIFA estimate in advance the charges for supplying the requested records.

If a citizen owes VFRIFA money from a previous FOIA request that has remained unpaid for more than 30 days, VFRIFA may require payment of the past-due bill before it will respond to the new FOIA request.

Copying costs (not including staff time) are as follows:

- A. Paper copies - \$0.07 (black and white) or \$0.15 (color) per page for 8.5"x11" copies; \$0.34 per page for 11"x17" copies; and \$8.00 (black and white) or \$18.00 (color) per page for 24"x36" copies
- B. CD-ROM/DVD - \$1.00 per disc

Section 7: The Use of Exemptions

The general policy of VFRIFA is to invoke the contract negotiations exemption whenever it applies in order to protect VFRIFA's bargaining position and negotiating strategy. An exemption will also be invoked for records regarding prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities at the New River Valley Commerce Park or any other investments to which VFRIFA may be a party. Other exemptions as noted in the FOIA may apply. Notification will be provided in writing if any portion of the information being requested is subject to this exemption.