

Office of the Independent Police Auditor Procedural Memorandum	
No: 02	Subject: Obligations Under FOIA
Approval Date: August 12, 2020	Review Date: August 12, 2022
Signed by Richard Schott, Independent Police Auditor	

Purpose: The Virginia Freedom of Information Act¹ (FOIA) ensures the public has “ready access to public records in the custody of a public body or its officers and employees.” This policy establishes the general responsibilities of staff in the Office of the Independent Police Auditor (OIPA) and members of the Police Civilian Review Panel (Panel) in responding to FOIA requests. It also outlines staff responsibilities related to FOIA’s requirements for public meetings.

Introduction:

Fairfax County officials must respond to all FOIA requests within five working days of receiving them. A seven working-day extension may be invoked within the first five working days of receiving the request if needed. OIPA must notify the requestor of the extension and explicitly state the conditions which make a response during the five working days impossible. "Day One" is considered the first working day after a request is received.

Some common response options include:

1. Provide responsive records in their entirety.
2. Provide a written response that all of the records are being withheld due to a statutory exemption and state the section of the Code of Virginia that allows withholding of the records.
3. Provide some of the records and withhold others or provide redacted records.
4. Inform the requestor that the records cannot be found or do not exist.
5. Inform the requestor that additional time is needed to respond (and why).

Additional response options are outlined in Fairfax County Procedural Memorandum No. 13-06.

OIPA Processing of FOIA Requests

- OIPA considers requests for information or records received via the IPAPoliceAuditor@fairfaxcounty.gov, PoliceCivilianReviewPanel@fairfaxcounty.gov, or any of the OIPA staff email addresses as FOIA requests. OIPA responds on behalf of the Panel to ensure an efficient and timely response – specifically within 5 business days.
- When a request is received, an OIPA staff member reviews the OIPA’s files on the S: Drive for responsive records and compiles them within a folder within S:\Administrative-Office\FOIA\REQUESTS.

¹ Code of Virginia § 2.2-3700, *et seq.*

- OIPA staff may also review Outlook emails to identify responsive email correspondence and save them within the S: drive folder. If needed, OIPA's agency records officer may solicit assistance from the Archives and Records Management division of DIT.
- The OIPA Director and other staff members will review the files to ensure that all responsive records are included.
- A response to the requestor is drafted² and that draft response and records are shared with independent legal counsel for review. Counsel will advise OIPA staff on the need for redactions based on applicable exemptions.
- OIPA staff consult with the FOIA office as needed, including when the request appears to request records likely retained by the FCPD or other County departments.
- If the request outlines records that may be in the possession of Panel members (i.e., not only records retained by OIPA staff on the S: Drive on the Panel's behalf), OIPA staff instruct the Panel members to review their files and produce any responsive records within 2 business days. OIPA provides Panel members with suggested "search criteria" such as date range and key words to aid Panel members in searching their documents and email correspondence. (See also the section on "Panel's Responsibilities to Respond to FOIA Requests".)
- OIPA staff may correspond directly with the requestor or may provide the FOIA office with responsive records so that the FOIA office may correspond (usually in the case of a multi-agency request).
- When the response requires sending multiple files, OIPA staff request the FOIA office to provide a ShareFile Electronic Transfer File (ETF) from which the requestor can download files within 30 days.
- FOIA responses will be retained in subfolders (named with Last Name and date of request) within S:\Administrative-Office\FOIA\REQUESTS.

Panel's Responsibilities to Respond to FOIA Requests

Panel members will have the following responsibilities in the event of a FOIA request:

- When prompted by OIPA, Panel Members will conduct a search of all related emails and documents. OIPA will send "search criteria" such as date range and key words. In some cases, OIPA's agency records officer may solicit assistance from the Archives and Records Management division of DIT to conduct a search of Panel Member emails.
- Provide all emails and documents (unaltered) in the Panel Member's possession (including non-records) that fall within the criteria to OIPA.
- Panel members must respond within 2 days so that the OIPA can prepare a coordinated response to the requestor within 5 business days.

² Staff should refer to the S: Drive for templates for responding to FOIA requests.

Public Meetings of the Panel³

FOIA defines a public meeting as any meeting of a public body, a designated subcommittee, or whenever three or more members of a public body are assembled for the purpose of discussing or transacting public business. Note that public meeting requirements under FOIA do not apply to meetings of public employees. OIPA staff is responsible for ensuring that the Panel's meetings comply with public meeting requirements as set forth ~~by~~ in FOIA by:

- Posting public meeting notice at least three business days in advance of the meeting on the county's public meetings calendar, the Panel's website, and in hard copy outside of the OIPA.
- Posting the meeting agenda and meeting materials to the Panel's website for public access and circulating the meeting agenda and meeting materials to Panel Members simultaneously. The agenda and meeting materials should also be made available in hard copy for public inspection within the OIPA office.
- Composing a meeting summary that captures the date, time, and location of the meeting; the members present and absent for the meeting; ~~and~~ a summary of discussion on items proposed, debated, or decided; and a record of votes.
- Posting audio recordings and approved summaries of Panel Meetings to the Panel's website for public access.
- Ensuring public access to meetings, whether the meeting is held in person or electronically⁴

Additional Resources

FAIRFAX COUNTY, VIRGINIA PROCEDURAL MEMORANDUM No. 13-06

Rights & Responsibilities: The Rights and the Responsibilities of the Fairfax County Government under the Virginia Freedom of Information Act.

E-mail: Use, Access & Retention, Virginia Freedom of Information Advisory Council.

VFOIA: The Virginia Freedom of Information Act. Virginia Code Sections 2.2-3700 to 2.2-3714.

PowerPoint presentation prepared for the Police Civilian Review Panel

OIPA Procedure 03 Records Management

³ Code of Virginia § 2.2-3707

⁴ Code of Virginia § 2.2-3708.2