

## Requesting Public Records from Clerks of Court

The Virginia Freedom of Information Act (FOIA) (§ 2.2-3700 et seq.) ensures citizens of the Commonwealth and representatives of the media access to certain public records in the custody of a public body, its officers and employees. A public record is any writing or recording, regardless of its physical form or how stored, 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, unless an exemption applies.

### Application of FOIA To Court Records

FOIA does not apply to “[t]he records maintained by the clerks of the courts of record, as defined in § 1-212, for which clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of [FOIA].” *See Va. Code § 2.2-3703 (A)(7)*.

### General Information About Requesting Public Records, Subject to FOIA, Maintained by Clerks of Court; Rights and Responsibilities

A request for public records that are subject to FOIA and maintained by the clerk of court should be directed to the clerk of court. In accordance with the provisions of FOIA, the person requesting records has the right to inspect or request copies of public records and to proceed with enforcement proceedings to enforce such rights. Likewise, the clerk has the responsibility to respond to the request in accordance with the provisions of FOIA.

The clerk may charge for the actual costs of searching for the requested records, copying costs or any other costs directly related to supplying the requested records. An estimate of the cost may be requested in advance. If the estimate is more than \$200, the clerk may require a deposit before proceeding with the request.

### Commonly Used Exemptions to FOIA

The Code of Virginia allows a public body to withhold certain records from public disclosure. Clerks of court commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1))
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2))

- Vendor proprietary information software (§ 2.2-3705.1 (6))

### **Public Records Maintained by a District Court Clerk**

- Public records maintained by a clerk of a district court, including nonconfidential court records maintained in individual case files, may be requested from the clerk of court. A listing of district court clerks may be found at: <http://www.vacourts.gov/directories/dist.pdf>.
- Any charges for accessing or searching for requested records will be assessed at the hourly rate of the person(s) engaged in any work necessary to respond to a request for records, even if no records are found.
- Pursuant to Va. Code § 16.1-69.48:2, each district court clerk may charge a fee for making a copy of any paper of record that does not exceed \$1 for the first two pages and \$.50 for each page thereafter.
- Requests for reports of aggregated, nonconfidential case data fields that are viewable through the online case information systems maintained by the Executive Secretary of the Supreme Court should be made to the Office of the Executive Secretary, pursuant to Va. Code §16.1-69.54:1, specifically to the Director of Legislative and Public Relations, Office of the Executive Secretary, Supreme Court of Virginia, 100 North 9th Street, Richmond, Va. 23219; Tel. 804-786-6455.

### **Public Records Maintained by a Circuit Court Clerk**

- Public records maintained by a clerk of a circuit court, including nonconfidential court records maintained in individual case files, may be requested from the clerk of court. A listing of circuit court clerks may be found at: <http://www.vacourts.gov/directories/circ.pdf>.
- Requests for reports of aggregated, nonconfidential case data fields that are viewable through the online case information systems maintained by the Executive Secretary of the Supreme Court should be made to the Office of the Executive Secretary pursuant to Va. Code §17.1-208, specifically to the Director of Legislative and Public Relations, Office of the Executive Secretary, Supreme Court of Virginia, 100 North 9th Street, Richmond, Va. 23219; Tel. 804-786-6455.

### **Public Records Maintained by the Clerk of the Court of Appeals of Virginia**

- Public records maintained by the Clerk of the Court of Appeals of Virginia may be requested from the clerk of court. Contact information for the Clerk may be found at: <http://www.vacourts.gov/courts/cav/home.html>.

## Public Records Maintained by the Clerk of the Supreme Court of Virginia

- Public records maintained by the Clerk of the Supreme Court of Virginia may be requested from the clerk of court. Contact information for the Clerk may be found at:

<http://www.vacourts.gov/courts/scv/home.html>.

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*A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. 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. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of the Code of Virginia.*

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A [public comment form](#) to comment on the quality of assistance provided to a requestor by a public body is available from the Virginia Freedom of Information Advisory Council.