

## Purpose

- To establish an efficient and effective process of providing timely and complete responses to requests under the Virginia Freedom of Information Act (§ 2.2-3700, et seq.) (FOIA or Act);
- To facilitate NWCSB's compliance with the Act's public disclosure requirements; and
- To advise a person seeking disclosure of public records under the Act of his or her rights and the responding public body's responsibilities.

## Scope

This Policy applies to all FOIA requests directed to Northwestern Community Services Board (NWCSB).

## Rights and Responsibilities under the Act

The Act, § 2.2-3700, et. seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media with circulation in the Commonwealth, 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 be withheld only if a specific, statutory exclusion applies.

The purpose of FOIA is to promote an increased awareness by the public of governmental activities. FOIA requires that the law be interpreted liberally, in favor of access, and that any exclusion allowing public records to be withheld must be interpreted narrowly.

## A Requester's FOIA Rights

Citizens of the Commonwealth and representatives of the media with circulation in the Commonwealth may:

- 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 pursuant to § 2.2-3713 in district or circuit court to compel compliance with FOIA, if the requester believes that his or her FOIA rights have been violated; and
- Request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that the request be in writing, nor does it need to specifically state that records are being sought under FOIA. Please, however, note:
  - It may be helpful to have a request in writing. This provides a record of the request. It also gives a clear statement of what records are being requesting, so that there is no misunderstanding over a verbal request. However, NWCSB will respond to verbal FOIA requests if not in writing.
  - The request must identify the records sought with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that may be requested; rather, it requires that the request be specific enough so that the NWCSB can identify and locate the records sought.

- The request must ask for records or documents. FOIA provides a right to inspect or copy records; it does not apply to a situation where general questions are asked about the work of NWCSB.
- The person requesting the records may choose to receive electronic records in any format used by NWCSB in the regular course of business.

NWCSB will attempt to work with the person making the request to understand what information is being sought. Making a FOIA request is not an adversarial process, but NWCSB may need clarification regarding the request.

### NWCSB's Responsibilities in Responding to a FOIA Request

NWCSB must respond to a request within five (5) working 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. If a request is received after 5pm EST, the request will be considered received the following working day.

The reason for the request for public records is not required. NWCSB will not ask why the records are being requested. FOIA does, however, permit NWCSB to ask the requester's name and legal address.

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

- We will provide the requested public records in their entirety.
- We will withhold all of the public records requested, because all of the public records are subject to a specific statutory exclusion. If all of the records are being withheld, NWCSB must provide a response in writing. That written response must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that protects the public record from disclosure.
- We will provide some of the public records requested, but will withhold others. NWCSB cannot withhold an entire record if only a portion of it is subject to an exclusion. In that instance, NWCSB may redact the portion of the record that may be withheld, and must provide the remainder of the public record. NWCSB must provide a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
- If it is logistically impossible for NWCSB to respond to a request within the five-day period, NWCSB must state this in writing, explaining the circumstances. This will allow NWCSB seven (7) additional working days to respond to the request.

If the request is for a very large number of public records and NWCSB cannot provide the records within twelve (12) days without disrupting other organizational responsibilities, NWCSB may petition the court for additional time to respond to the request. FOIA, however, requires that NWCSB make a reasonable effort to reach an agreement with the requester concerning the scope of the request or the production before petitioning the court.

### Costs

NWCSB may require a person seeking public records to pay for the records. FOIA allows NWCSB to charge for the actual costs of responding to FOIA requests. 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 NWCSB estimates that it will cost more than \$200 to respond to a request, NWCSB may require the person seeking the public records to pay a deposit before NWCSB proceeds with responding to the request.

A person seeking public records may request that NWCSB estimate in advance the charges for supplying the records requested. This will allow the person seeking the record to understand any costs up front, or give him or her the opportunity to modify the request in an attempt to lower the estimated costs.

NWCSB can require payment for past-due bills from previous FOIA requests before responding to new FOIA requests. A past-due bill is any bill that remained unpaid for more than 30 days.

## Commonly Used Exclusions

The Act permits any public body to withhold certain records from public disclosure. NWCSB commonly withholds records subject to the following exclusions (although other exclusions under the Act or the Code of Virginia may also protect a public record from disclosure):

- Personnel records (§ 2.2-3705.1(1));
- Records subject to attorney-client privilege (§ 2.2-3705.1(2)) or attorney work product (§ 2.2-3705.1(3));
- Vendor proprietary information software (§ 2.2-3705.1(6));
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12))