



Virginia Workers' Compensation Commission

Policy: ADM 3, Freedom of Information Act (FOIA)

Effective: August 7, 2018

Objective

This policy concerns requests for information that are submitted to the Virginia Workers' Compensation Commission (VWC) and responses by VWC employees to requests made pursuant to the Freedom of Information Act, § 2.2-3700 *et seq.* of the *Code of Virginia*.

Cancellation

This policy revises and supersedes the previous VWC Freedom of Information Act Policy, effective April 5, 2011.

References

Virginia Freedom of Information Act, § 2.2-3700 *et seq.* of the *Code of Virginia*

Definitions

- A. Compliance Officer - The Compliance Officer is the person who is designated to manage and respond to Freedom of Information Act (FOIA) requests. The Executive Director serves as the Compliance Officer.
- B. Public Record - A public record is any writing or recording, regardless of whether it is a paper document, 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.

Scope of the Policy

This policy applies to all VWC employees.

Policy

- A. Virginia's Freedom of Information Act ensures that citizens of the Commonwealth and certain media members have ready access to public records that reside in the custody of public bodies, public officials, and public employees, and that they will be freely admitted to meetings in which public bodies conduct the business of the people. The Act is also intended to promote a greater awareness by all persons of governmental activities, and to offer citizens every opportunity to witness the operations of government. (*Code of Virginia*, § 2.2-3700.)



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- B. In furtherance of the Commonwealth's policy objective, the FOIA statute directs that the law be interpreted liberally, in favor of access. However, within the statute, the General Assembly has designated certain exceptions to this presumption. Nonetheless, the Act requires a narrow interpretation of any exemption which allows state or local government records to be withheld.
- C. It is the policy of the VWC to follow the provisions of the Virginia Freedom of Information Act, § 2.2-3700 *et seq.* of the *Code of Virginia*. It is also the policy of the VWC to follow the requirements for exemptions, as set out in § 2.2-3711 and §§ 2.2-3705.1 through 2.2-3705.8 for meeting exemptions and records exclusions, respectively. In addition, under § 65.2-903 certain VWC records are deemed not public. The VWC's Compliance Officer (the Executive Director or designee) determines which records and meetings are exempt from coverage by FOIA.

Procedures

- A. Records may be requested via U.S. Mail, fax, e-mail, in person, or over the telephone. There is no requirement that a FOIA request be in writing, nor that the request specifically state that the request is being made pursuant to FOIA. Any FOIA request that is questionable, unclear, or that concerns records which are not clearly exempted shall be immediately sent to the Compliance Officer for clarification.
- B. When a VWC employee receives a request for information:
 - 1. The employee will record the request, if verbal, noting the date, time, the requestor's name, address, telephone number, and e-mail address, if applicable.
 - 2. The employee will note any specific information regarding how the requestor wishes the records to be produced, e.g., paper, compact disk, electronic file, etc.
 - 3. The employee shall immediately give the information to the Compliance Officer and respond appropriately to the request and copy the Compliance Officer on the response.
 - 4. If a FOIA request requires assistance from the Information Systems Department (IS) or the Project Management Office (PMO), an issue-tracking ticket must be created.
- C. The VWC must respond to FOIA requests within five business days of receipt. "Day One" is the day after the request is received. The five-day period excludes weekends, holidays, and any other day that Virginia's state government offices are closed.
- D. Within two business days, the Compliance Officer, or designee, will determine whether the records sought are public and are available from the VWC.
 - 1. If the records are, in whole or in part, exempt from production or are not records kept by the VWC in the ordinary course of business, the Compliance Officer will notify the requestor in



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writing why the records will not be produced, citing the pertinent section(s) of the *Code of Virginia*, as appropriate.

2. The following Fee Schedule charges shall apply to copies of documents provided in accordance with FOIA:
 - a. No charge for 1 - 10 pages;
 - b. \$.25 per page for all documents copied for eleven or more pages, which will include the first ten pages printed, resulting, for example, in a charge of \$3.75 for copying fifteen pages;
 - c. An additional \$ 2.00 processing fee for certified copies;
 - d. A flat fee of \$ 25.00 for imaged files; and
 - e. \$ 1.00 per page for paper files that are imaged and copied to a CD.
3. In addition to amounts assessed under the fee schedule above, there will be an added charge if the act of responding to a FOIA request requires the extraction of information from the VWC's electronic databases and the production of that information in a tangible medium. For example, if responding to a FOIA request requires an employee of the Information Systems Department to spend two hours retrieving data and producing it in a tangible medium, then the requestor shall be charged a sum equal to twice the employee's hourly rate of pay, because the employee worked for two hours on the request.
4. The VWC may charge such other sums in connection with responding to FOIA requests, as are authorized by § 2.2-3704 of the *Code of Virginia*.
5. The VWC is not required to provide records from an electronic database in a format that is not regularly used by the VWC. However, the VWC shall make reasonable efforts to provide records in any format according to the terms and conditions that are agreed upon between the requestor and the VWC, including payment of reasonable costs. For the purposes of this policy, the excision of exempt fields of information from a database, or the conversion of data from one available format to another, shall not be deemed the creation, preparation, or compilation of a new public record.
6. Requests for information to determine employment eligibility are not FOIA requests, and, therefore, are not addressed in this policy. The VWC shall continue to charge a \$ 25.00 search fee for such requests.
7. When the requester owes the VWC for a previous records request that remains unpaid for 30 days or more after billing, the VWC shall require the requester to pay the amounts owed before the VWC processes a new FOIA request.



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8. If the VWC determines in advance that producing the requested records may result in a cost that exceeds \$200, the VWC may require the requester to agree to pay a deposit that does not exceed the cost of supplying the requested records. In such a case, the deposit shall be credited toward the final cost for providing the records.
- E. Within three business days after the receipt of the request, the Compliance Officer will notify the department which maintains the requested records.
1. The Compliance Officer will specify what records are needed and the period within which they must be produced.
 2. If the records cannot be produced within the required time, the department head or designee will notify the Compliance Officer as soon as possible.
- F. The Compliance Officer shall provide the requested records to the requestor within five business days after receipt of the request, and provide one of the following types of responses within the five-day time period:
1. A response that informs the requester that the VWC is providing the requested records, in their entirety.
 2. A written response that informs the requester that the VWC is withholding all of the requested records, because all of the records are subject to a specific statutory exemption. The written response must identify the volume and subject matter of the records being withheld, and cite the specific section of the *Code of Virginia* that includes the exemption for those records.
 3. A written response that informs the requester that the VWC is providing some of the requested records and withholding other requested records. The VWC must redact the portion of the record to be withheld, and must provide the remainder of the record. The written response must identify which records are being withheld, and cite the specific section of the *Code of Virginia* that includes the exemption for those records.
 4. A written response that informs the requester that the VWC cannot find or does not have the requested records, or that the records do not exist. However, when it is known that another public body has the requested records, the written response must include contact information for the other public body.
 5. A written response that informs the requester that the VWC cannot respond to the request within the five-day timeline. The response should:
 - a. Explain the reasons for the delay; and



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- b. Inform the requester that the VWC needs an additional seven business days to respond to the request.
- G. If the response cannot be completed in 12 business days, the Compliance Officer must make reasonable efforts to reach an agreement with the requestor concerning production of the documents.
- H. If the requested records are of such extraordinary volume that responding to the request would prevent the VWC from meeting its operational responsibility, the Compliance Officer shall present a petition before the Circuit Court of the City of Richmond or other appropriate court within the statutory period, after consultation with the Office of the Attorney General.
- I. In addition, the VWC shall:
 1. Make a report of the existence of any information system that it operates or develops that includes a description of the nature of the data in the system and purpose for which it is used;
 2. Complete an inventory listing or similar display of the information that shall be made available for inspection by the general public in the office of the Executive Director; and
 3. Provide copies, upon request, of the report and inventory, and charge a fee for the copies that is sufficient to cover the reasonable costs of reproduction.

Responsibilities

- A. The following responsibilities are assigned to employees who receive requests for information.
 1. The employee will record the request, if verbal, noting the date, time, the requestor's name, address, telephone number, and e-mail address, if applicable.
 2. The employee will note any specific information regarding how the requestor wishes the records to be produced, e.g., paper, compact disk, electronic file, etc.
 3. The employee shall immediately give the Compliance Officer this information or respond appropriately to the request and copy the Compliance Officer on the response.
- B. The following responsibilities are assigned to the Compliance Officer.
 1. Record information concerning each request, both for personally received requests and for requests received by other employees, and keep accurate documentation of receipt of the request.
 2. Respond to the request, as appropriate, within the timelines required by the *Code of Virginia*.



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3. Keep and maintain accurate documentation of any response to the request.
4. As needed, keep and maintain records of any interaction with the courts.

Expiration Date

This policy will remain in force until revised or rescinded.

Appendices

None.

Approval: _____
Chairman (Printed Name)

Chairman (Signature)

Date Approved: _____