

Information Regarding Public Records

INTRODUCTION: What is FOIA?

FOIA (Freedom of Information Act) is a federal legislation that requires municipalities and other public entities to make their records available for inspection and reproduction. This includes all written and recorded communications and documents.

When a citizen makes a request to have access to public records, they are doing so under the Federal Freedom of Information Act, and all records must be made available for inspection and reproduction. Further, in the State of Vermont, State Legislation regulates us in how we are required to respond to and process requests for public records.

Therefore, it is not a "FOIA request", but rather a "public records request" that is regulated by both State and Federal Law.

The entire Vermont Legislation regarding Public Records can be found in Title 1, Chapter 5, Subchapter 3, but for the purpose of this document, some extractions are provided:

Relevant Points from the Vermont Legislation:

- "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.
- a)(1) Public records in general and archival records in particular should be systematically managed to provide ready access to vital information, to promote the efficient and economical operation of government, and to preserve their legal, administrative, and informational value.
- (b) A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule, as defined in 3 V.S.A. § 117(a)(6), that has been approved by the State Archivist.

(Added 2007, No. 96 (Adj. Sess.), § 1; amended 2017, No. 100 (Adj. Sess.), § 2.)

- b) Upon request, the custodian of a public record shall promptly produce the record for inspection or a copy of the record, except that:
 - (1) If the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall promptly certify this fact in writing to the applicant and, in the certification, set a date and hour within one calendar week of the request when the record will be available.
- In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (b)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.
- designate the agency's or department's records officer described in 3 V.S.A. § 218, or shall designate some other person, to be accountable for overseeing the processing of requests for public records received by the agency or department in accordance with this section; and(2) post on the agency's or department's website the name and contact information of the person designated under subdivision (1) of this subsection. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2005, No. 132 (Adj. Sess.), § 2; 2007, No. 110 (Adj. Sess.), § 1; 2011, No. 59, § 4; 2017, No. 166 (Adj. Sess.), § 5; 2019, No. 14, § 1, eff. April 30, 2019.)

From the VLCT/Town of Pownal Public Records Policy:

“The Act does not require the creation of a public record, nor does the act require transmission of a record by any means (including U.S. mail, email, fax, etc.) Nevertheless, municipal officials may choose to create and/or transmit a public record upon request.”

This means that the municipality is not required to additionally inspect, investigate and organize public records to create a new public record according to the specifications of the requestor. For instance, if a requestor is asking for the public documents that “prove” an assertion they are making, or answer a specific question, this requires additional searching and organizing of information which then produces a “new public record”. The municipality can choose to perform this kind of search, and charge for reimbursement of staff time at a rate of .57 cents per minute after 30 minutes of work. However, that is at their discretion, and is not mandated by Statute. For transmission of a record (the act of copying/ mailing/ faxing an already existing public record) the requestor can be asked to reimburse staff time at a rate of .33 cents per minute after 30 minutes. See VT suggested fee schedule:

Pursuant to 1 V.S.A. 316(d) and Acts 1996, No. 159 section 1, the following fees are established as the actual cost of providing a copy of a public record:*

- 1. For staff time involved in physically duplicating a record, \$.33 per minute after the first 30 minutes.**
- 2. For senior-level staff time, and information technology specialists' time spent extracting data from databases, or performing similar tasks necessary to comply with a request to create a new public record, \$.57 per minute.**
- 3. For any other staff time for which cost can be charged and collected under this section, \$.45 per minute.**
- 4. For photocopies, \$.05 per single-sided page, \$.09 per double-sided page for pages up to 8.5 by 14 inches.**
- 5. For color photocopies, \$1.00 per single-sided page.**
- 6. For computer-generated paper copies, \$.02 per page for pages up to 8.5 by 14 inches.**
- 7. For computer diskettes, \$.28 each for 3.5-inch diskettes.**
- 8. For compact discs, \$.86 each for write-once CD w/case, \$2.31 each for re-writable CD w/case.**
- 9. For audio tapes, \$.81 each.**
- 10. For video tapes, \$1.69 each.**
- 11. For DVDs, \$2.00 each for write-once DVD w/case, \$4.00 each for re-writable DVD w/case.**

**Extra searching and organizing of information into a new public record is not required under State of Federal Law as per above. The Statute only requires that the citizen is given ACCESS to the public records, not that town staff or elected officials will investigate specifics for them, or provide the requested material in any specific manner. At our discretion, we can perform further investigatory searches at a reimbursed staff time as per the fee schedule.