

# Public School Records Consortium



Williamsburg  
Fort Magruder  
Inn

March 19,  
2013

Dear Mr. \_\_\_\_\_

This office is in receipt of your request for records made in accordance with the Virginia Freedom of Information Act (§2.2-2706 et seq.). Generally, you have made a request for the following records:

1. \_\_\_\_\_
2. A copy of the five-year comprehensive plan.

Our response is as follows:

1. \_\_\_\_\_
2. Please note your request was received on Monday, April 4, 2011. Accordingly, please be advised that it is not practically possible to provide the requested records or determine whether they are available within the five day period (April 11, 2011) required by FOIA because of insufficient staff. Therefore, we are invoking subsection B4 of §2.2-2704 of the Code of Virginia to provide us with seven additional working days to respond to your request.

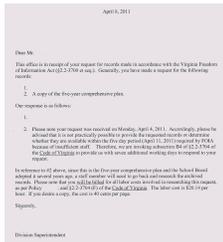
In reference to #2 above, since this is the five-year comprehensive plan and the School Board adopted it several years ago, a staff member will need to go back and research the archived records. Please note that you will be billed for all labor costs involved in researching this request, as per Policy \_\_\_\_\_ and §2.2-2704.9 of the Code of Virginia. The labor cost is \$20.14 per hour. If you desire a copy, the cost is 40 cents per page.

Sincerely,

Division Superintendent

## What a citizen hears

- Poor records management
- Excessive fees
- Stonewalling
- Adversarial and/or intimidating



## FOIA is only as good as the people who use it

- FOIA encourages government, requesters to work together
- Try to imagine yourself as a records requester
- There is the letter versus the spirit of the law
- FOIA contains a lot of discretion
- Create a culture of openness

# YOU

YOU have the power to shape a citizen's view of government.



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## FOIA as PR tool

- Friendly, courteous and helpful
- Civic-minded
- Honest
- Open to working together

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## Reduce your workload

- Proactively make records available before a request is made
  - at the clerk's desk
  - on your website

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The screenshot shows the Federal Trade Commission's website with a search bar and navigation menu. The main content area is titled "Electronic Reading Room" and contains a "Contents" table with links to various document categories. A footer section provides contact information for the Consumer Response Center (CRC).

Contents	
<a href="#">About FOIA</a>	<a href="#">Frequently Requested Records</a>
<a href="#">About the Privacy Act</a>	<a href="#">FOIA Annual Reports</a>
<a href="#">FOIA Reading Rooms</a>	<a href="#">FOIA Administrative Staff Manuals</a>
<a href="#">Submitting a Request</a>	<a href="#">Merger &amp; Acquisition Information</a>
<a href="#">FOIA</a>	<a href="#">Citizens Guide to FOIA</a>
<a href="#">Contents</a>	<a href="#">FOIA Handbook PDF</a>
<a href="#">Links</a>	<a href="#">Agency Policy Statements</a>
<a href="#">Table of Contents</a>	<a href="#">FOIA Options and Orders</a>
	<a href="#">FOIA Rules (16 CFR 24.999)</a>
	<a href="#">Clear FOIA Officer Report</a>

\* Many public records created prior to 1987 are not on-line and may be available through our Consumer Response Center. Records for public comment should be made to:

Consumer Response Center (CRC)  
Federal Trade Commission  
Room 100  
800 Pennsylvania Avenue, N.W.  
Washington, D.C. 20548  
Telephone number: (202) 326-2222

Electronic reading rooms

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## Manage your records

- Use folders, lots and lots of folders
- Use keywords, lots and lots of keywords
- Use meta data
- Don't pass the cost of poor records-management on to the FOIA requester
- Back-up, review and purge

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Know your fees ahead of time

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## FOIA basics

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## The presumptions

- All records are presumed open
- All exemptions are to be construed narrowly
- The rest of FOIA is to be construed liberally, in favor of openness

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## Making a FOIA request

- Describe the record with “reasonable specificity”
- No duty to put it in writing
- No duty to narrow the request
- No duty to say “FOIA”
- No duty to say who you are or why you want the record

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## Really?



what if the requester is a terrorist?



what if they're just using our data to make money?

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## 5 allowable responses

- Here are all the records
- We're withholding/redacting some
- We're withholding all of them
- We don't have them/they don't exist
- We need an additional 7 days

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## Remember....

- When records are withheld/redacted, the exemption/Va. Code section allowing it must be cited in writing
- The 5-day response deadline starts the day after you receive a request
- Failure to respond is a denial and is considered a **VIOLATION** of FOIA

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## The art of the deal



## Special Issue #1: What about privacy?

There is no catch-all  
privacy exemption in FOIA

## Specific privacy exemptions

### In FOIA

- Financial data -- personal credit card or bank account numbers
- Email addresses of people who've signed up for government new alerts
- Cell phone numbers of undercover officers

## Specific privacy exemptions

### Elsewhere in the Code

- Medical information
- Social services, child enforcement info
- Social Security Numbers (first 5 digits)
- Starting July 1: concealed handgun permits

## Specific privacy exemptions

### FERPA (& FOIA: 2.2-3705.4(1))

- Protects “education records”
- Frequently misapplied
- Directory information
- Statistical and aggregate data
- “Mosaic” theory

### FERPA resources

- Full text:  
<http://www.law.cornell.edu/uscode/text/20/1232g>
- U.S. Department of Education advisory that FERPA only covers information about students that comes directly from confidential student records.  
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/montcounty0215.html>
- “FERPA and access to public records” by the Student Press Law Center  
[http://www.splc.org/pdf/ferpa\\_wp.pdf](http://www.splc.org/pdf/ferpa_wp.pdf)

## Special Issue #2: Email, Cell Phones & Social Media

## Email

- Just like any other record
- Judge it on the content, not the medium
- What matters is whether it discusses “public business,” not which computer / email account it was sent or received from

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## Phones & tablets

- Treat them the same way your would treat email & other records
- Create / update policies and procedures for accessing records on work and personal phones



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## Social Media



- Facebook, Twitter, LinkedIn, YouTube are public records
- Citizen responses have no expectation of privacy
- Remember to search off-site messaging
- If agency uses any / all, learn the policy for retrieving past entries

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## Special Issue #4: Out-of-state Requests

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## The letter of the law



Virginia is one of only 5 or 6 states in the country that says: you can only use our public records act (FOIA) if you are from our state.



## McBurney v. Young



- The U.S. Supreme Court heard oral arguments on Feb. 20
- A decision will be issued by June 30 at the latest

## Letter v. spirit of the law

The Letter

You don't have to fill a request for records made by someone from another state

People have interests in other states that defy geographic boundaries

The Spirit

Special Issue #3:  
This guy is bugging  
the heck out of us!

## What can I do?

- Answer every new request.
- For repeat requests, tell him it's already been filled (use form letters!).
- If you haven't charged him, do it now. And make sure his account up to date.
- If you can't get your other work done, ask a judge to grant more time to respond.

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## GRIN & BEAR IT.



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## Where to go for help

- Virginia Coalition for Open Government
- Freedom of Information Advisory Council
- Attorney General

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