

# Virginia Freedom of Information Act – Rights and Responsibilities

## The Rights of Requesters and the Responsibilities of New River Community College under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media 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 only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

### **Your FOIA Rights**

- You have the right to request to inspect or receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance. Public bodies must 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.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

### **Making a Request for records from New River Community College**

- You may request records by U.S. Mail, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.
  - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of

your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.

- Your request must identify the records you are seeking with “reasonable specificity.” This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to a situation where you are asking general questions about the work of the college, nor does it require the college to create a record that does not exist.
- You may choose to receive electronic records in any format used by New River Community College in the regular course of business.
  - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.
- If we have questions about your request, please cooperate with staff’s efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

**To request records from New River Community College, you may direct your request to Dr. Mark C. Rowh. He can be reached at 5251 College Drive, Dublin, Virginia 24084, (540) 674-3600, ext. 4241. Email FOIA requests to: [mrowh@nr.edu](mailto:mrowh@nr.edu). You may also contact him with questions you have concerning requesting records from New River Community College.**

In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about how FOIA works. The Council was created in the legislative branch of state government to issue opinions on the operation and application of FOIA, to publish educational materials, and to provide training about FOIA. However, please be aware that the Council is not a records repository and does not process records requests on behalf of other public bodies, nor is the Council an investigative or enforcement agency. The Council may be contacted by email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov), or by phone at (804) 698-1810 or toll-free at 1 (866) 448-4100.

### **New River Community College Responsibilities in Responding to Your Request**

- New River Community College must respond to your request within five working days of receiving it. “Day One” is considered the day after your request is received. The five-day period does not include weekends or holidays. The five-day period does not include weekends, holidays, or other days when NRCC is closed for business.

- The reason behind your request for public records from New River Community College is irrelevant, and you do not have to state why you want the records before we respond to your request. Nevertheless, FOIA allows NRCC to require you to provide your name and legal address. FOIA also allows NRCC to deny your request for public records if you are not a citizen of Virginia or a representative of media with circulation in Virginia.
- FOIA requires that New River Community College make one of the following responses to your request within the five-day time period:
  - 1) We provide you with the records that you have requested in their entirety.
  - 2) We withhold all the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld and state the specific section of the Code of Virginia that allows us to withhold the records.
  - 3) We provide some of the records that you have requested but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld and must provide you with the remainder of the record. Again, we must identify in writing, the volume and subject matter of the withheld portions and state the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
  - 4) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you want). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.
  - 5) If it is practically impossible for New River Community College to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request. In the case of criminal investigative files requested pursuant to § 2.2-3706.1 of the Code of Virginia, we are allowed an additional 60 working days to respond to your request, giving us a total of 65 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

## **Costs**

- 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.
- You may have to pay for the records that you request from New River Community College. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for, reviewing, copying, scanning, and redacting the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront or give you the opportunity to modify your request in an attempt to lower the estimated costs. The five days that we have to respond to your request does not include the time between when we send you the estimate and when you respond. If you do not respond within 30 days, then your request will be deemed to be withdrawn.
- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, New River Community College may require payment of the past-due bill before it will respond to your new FOIA request.

### **Policy Regarding Fees**

It is New River Community College policy to charge for the actual costs of responding to FOIA requests. We charge for staff time spent searching for, reviewing, copying, scanning, and redacting the requested records, copying costs, or any other costs directly related to supplying the requested records.

New River Community College does not charge a fee to provide scholastic records that must be made available for inspection pursuant to the Family Educational Rights and Privacy Act (FERPA) if the request for scholastic records is made by a parent or legal guardian of a minor student or by a student 18 years old or older, or for the first hour of time to respond to a FOIA request.

Copying costs shall be assessed on public records that are printed, but not on public records that are provided electronically.

Public records are provided at the costs specified below:

- |   |   |                      |
|---|---|----------------------|
| o | Paper copies from paper original (B&W)        | \$.25/page           |
| o | Larger than legal size paper copies           | \$1.00/page          |
| o | Video, CD, DVD, etc.                          | Cost of reproduction |
| o | Staff time at full-time hourly rate (average) | \$25.00/hour         |

New River Community College also may charge for the actual cost of the medium by which the information is provided (e.g., CD, DVD, flash drive, etc.) if that medium is requested by the requester, and for the actual cost of mailing the requested records if the cost is above the cost of the standard-sized flat rate envelope.

New River Community College may apply any costs incurred in estimating the costs of providing the requested records toward the overall costs to be paid by the requester.

### **Types of records**

The following is a general description of the types of records held by New River Community College:

*Accounts Payable and Accounts Receivable*  
*Accreditation*  
*Admission and Enrollment*  
*College reports and meeting minutes*  
*Capital Project*  
*Contracts*  
*Emergency Operations Plan*  
*Financial*  
*Inventory*  
*Parking/Transportation*  
*Personnel*  
*Procurement*  
*Risk Management*  
*Workers' Compensation*

If you are unsure whether New River Community College has the record(s) you seek, please contact the FOIA Officer directly.

### **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. New River Community College commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 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))
- Scholastic records (Va. Code § 2.2-3705.4(1))

### **Policy regarding the use of exemptions**

New River Community College will invoke the personnel and scholastic records exemptions to protect the privacy of its employees and students. NRCC will invoke the contract negotiations exemption whenever it applies to protect NRCC's bargaining position and negotiating strategy.