



Operating Procedure

Effective Date January 1, 2019	Number 025.1
Amended 2/1/19	Operating Level Department
Supersedes Operating Procedure 025.1 (5/1/15)	
Authority COV §2.2-3700 et seq., §2.2-3800 et seq., §2.2-4000 et seq., §53.1-10, §53.1-25	
ACA/PREA Standards None	
Office of Primary Responsibility Director of Administrative Compliance	

Subject
PUBLIC ACCESS TO DOC PUBLIC RECORDS

Incarcerated Offender Access
Yes No

Public Access Yes No
Attachments Yes #1 No

I. PURPOSE

This operating procedure governs appropriate public access to public records of the Department of Corrections.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

News Media - A media organization whose primary objective is to collect and report a wide range of news-related content for a newspaper, magazine, news website, news service, or radio and television news; to be considered a news organization, the publication's primary purpose and content must not be about a specific offender.

Public Records - All writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

Virginia Freedom of Information Act (FOIA) - Code of Virginia (COV) §§2.2-3700 thru 2.2-3714; governs the disclosure of public records in the custody of a public body or its officers and employees.

Working Day - Weekdays, Monday through Friday, except official state holidays

IV. PROCEDURE

A. Requests for Records

1. In-state and news media requests:

- a. Citizens of the Commonwealth of Virginia (COV §2.2-3704(A)), excluding those incarcerated in federal, state, or local facilities (COV §2.2-3703(C)) have the right to inspect or receive copies of public records in accordance with FOIA. Offenders under probation, parole, post release, or conditional release supervision in the community have the right to inspect or receive copies of public records in accordance with FOIA.
- b. Inquiries from news media publishing or broadcasting in or into the Commonwealth of Virginia should be managed in accordance with Operating Procedure 022.1, *News Media Relations*, and reported immediately to the Communications Unit in the Director's Office.

2. Out of State Requests

- a. Out-of-state, non-media requesters are not entitled to inspect or receive copies of public records

under FOIA; however, staff are encouraged to provide records as a courtesy to the requester.

- b. When a unit decides to deny a request, the unit must respond to the request within the statutory time limits stating the reason for denial.
 - c. If residency is unclear, employees may require name and legal address. (See Attachment 1, *Template for FOIA Responses*, for additional guidance.)
3. Request Requirements
- a. Form of Requests
 - i. Requests may be submitted via U.S. Mail, fax, email, in-person, or over the telephone.
 - ii. Requests need not reference the Freedom of Information Act to invoke all its statutory requirements.
 - iii. Staff may encourage requesters to submit their request in writing; however, staff cannot require it. If the request is not received in writing, staff should, whenever possible, email the requester to confirm the date and subject of the request.
 - iv. The requester may ask for electronic records (including databases and e-mail) in any format regularly used by the DOC.
 - b. Reasonable Specificity
 - i. A request for public records must identify the requested records with reasonable specificity; (a common sense standard) to allow staff to identify and locate responsive information.
 - ii. When a request is not reasonably specific, staff should work with the requester to narrow or better define the subject of the request.
 - iii. When additional information is needed to narrow or specify the scope of the request, staff must seek clarification from the requester within the initial timeline for response. (See Attachment 1, *Template for FOIA Responses*, for additional guidance.)
 - c. Existing Records
 - i. FOIA does not apply to inquiries that simply ask questions nor does it require creation of a record not already in existence.
 - ii. The extraction of exempt fields of information from a database or the conversion of data from one available format to another is not creation of a new record.

B. Responding to a Request for Records

1. Upon receipt of a public records request, DOC staff must respond in accordance with the Virginia Freedom of Information Act (FOIA). It is the task of each respondent and Organizational Unit Head to ensure response is appropriate and timely.
2. Attachment 1, *Template for FOIA Responses*, provides guidance and suggested language for appropriate responses.
3. Timeline for Response
 - a. DOC staff must respond to requests for public records, in writing, within five working days of receipt of the request unless otherwise agreed to, in writing, by the requester.
 - i. The date of receipt is the day DOC received the request (not the day it was received by a particular custodian within the agency).
 - (a) To ensure response is timely, staff must expediently redirect requests sent or forwarded to them in error.
 - (b) When multiple offices are involved in responding to a request, staff must contact the Legal Issues Coordinator immediately following receipt of the request.
 - ii. "Day One" is the first working day after the request is received. Requests received after 5:00 p.m. are considered received the next working day.
 - iii. The timeline does not include weekends, holidays, or other days DOC offices are closed.
 - iv. "Forwarding" or "Receiving" a request to or from another office within DOC does not change the date for which a response is due.

- b. DOC staff may invoke a seven-working-day extension when unable to respond to a request within the initial five working days. If invoked, DOC staff must articulate the specific conditions that made responding within five days impossible.
- c. When a request is for an extraordinary volume of records or requires an extraordinarily lengthy search, such that response is likely to require longer than the statutory timeline permits, staff should immediately contact their Unit Head for guidance.
- d. When DOC staff has requested clarification of a request, payment of an estimate, or verification of a requestor's legal Virginia address or media status, and seven business days have passed without a response from the requestor, DOC staff should close the request and notify the requestor that due to the requestor's non-response, the request has been closed and will need to be resubmitted for consideration.
- e. Failure to respond to a request for records within the statutory timeline violates FOIA. Penalties include:
 - i. A potential fine of not less than \$500 nor more than \$2,000 to be paid by the employee in the employee's individual capacity (Courts fine the respondent not the agency).
 - ii. The DOC may waive its ability to withhold records that would otherwise be discretionarily exempt.
- f. See Attachment 1, *Template for FOIA Responses*, for additional guidance.

4. Format of Response

a. Elected Method of Receipt

- i. The requester may elect to receive records (including databases, audio, video, and email) in any format regularly used by the DOC or to receive a printed copy of those records.
- ii. If the requester does not specify a preferred method of receipt, records should be provided electronically whenever possible.
- iii. To retain the integrity of the original, records should be copied and converted to a read-only format (.pdf for documents) before disclosure.

b. Duty to Redact

- i. Staff may not withhold an entire record when only a portion is exempt. Staff must release the requested records with the exempt information redacted.
- ii. When the entire record is exempt, DOC staff may withhold the record in its entirety. Commonly cited examples include:
 - (a) Offender Records related to their imprisonment - §2.2-3706(B)(4)
 - (b) Probation and Parole Records - §2.2-3706(B)(6)
 - (c) Medical Records - §2.2-3705.5(1)
 - (d) Personnel Records - §2.2-3705.1(1)

c. Citing Every Exemption

- i. Whenever a record is withheld, whether in whole or in part, the record being withheld must be described, and the specific exemption(s) justifying its withholding must be cited.
- ii. The description must include, with reasonable particularity, the volume or amount of records being withheld and the subject of the record (e.g., 20 pages of incident reports, 3 DVDs of rapid eye footage, 1 hour of audio).
- iii. When specific pieces of information (names, identifying numbers, etc.) are redacted from a responsive record, description of the redacted information may not be necessary provided the citation would sufficiently clarify the subject of the redaction. Still, each time information is redacted or withheld, the justification for doing so must be provided.

Example - When redacting from a record entitled "Employee ID #" and citing the personnel records exemption, staff does not need to provide additional descriptive information.

- d. See Attachment 1, *Template for FOIA Responses*, for additional guidance.

C. Assignment of Records Disclosure Responsibilities

1. DOC staff
 - a. Each employee is responsible for maintaining the records, both paper and electronic, in the employee's possession in accordance with Operating Procedure 025.3, *Public Records Retention and Disposition*.
 - b. Staff must not ignore or deny a request by virtue of it being misdirected to their office.
 - i. Each office is representative of DOC such that a request sent to a specific office is a request appropriately made to the entire DOC.
 - ii. If a request is directed to or received by staff in error, staff must immediately redirect the request to the correct recipient or, if unknown, contact their Unit Head for proper handling.

Example - Facility A receives a request for, "The disciplinary records of offender John Doe from January, 2015 to present. After reviewing its records, Facility A determines that John Doe is, and was, at Facility B during that timeframe. Immediately thereafter, Facility A should forward the request to appropriate staff at Facility B for response.
 - c. When a request involves multiple custodians from multiple offices within DOC, the original recipient of the request should contact the Legal Issues Coordinator for appropriate coordination among offices.

Example - Human Resources receives a FOIA request for "Any documents related to the termination of John Doe from January, 2015 to present." After reviewing its records, HR determines that SIU investigated the incident in question. Because both HR and SIU have responsive records, HR should immediately contact the Legal Issues Coordinator for handling.
 - d. Requests for current, unrestricted operating procedures should be directed to the DOC Public Website.
 - e. Information is available on the DOC Public Website FOIA Notice (see [The Virginia Freedom of Information Act, Rights and Responsibilities](#)) informing citizens of the process for requesting and obtaining DOC records through a FOIA request. This information should be printed and provided free of charge upon request to citizens inquiring about how to make a FOIA request.
2. Organizational Unit Heads
 - a. Each Organizational Unit Head is responsible for ensuring that all requests for public records received by or directed to their Unit are responded to in accordance with the provisions and requirements of FOIA and this operating procedure.
 - b. Each Organizational Unit Head should maintain a file of the public records requests its office receives and responds to.
 - c. Following review of this operating procedure and its related attachment, Unit Heads may contact the Legal Issues Coordinator when additional guidance is needed.
 - d. Violations of this operating procedure or the FOIA statute must immediately be reported to the Legal Issues Coordinator.
3. The Director has designated a Legal Issues Coordinator within the DOC Legal Services Unit to fulfill the following functions:
 - a. Respond to records requests on behalf of the Director, the Chief of Corrections Operations, the Deputy Director for Administration, and the Deputy Director of Programs, Education, and Reentry.
 - b. Respond to requests for execution records; all requests related to executions must be forwarded to the Legal Issues Coordinator for response.
 - c. Other than the above, the Legal Issues Coordinator is not responsible for drafting responses on behalf of DOC staff but may provide guidance as needed.

D. Associated Costs

1. Readily available documents provided electronically should be furnished at no cost to the requester.

2. The following charges may be assessed for hard copy documents provided in response to a FOIA request in accordance with COV §2.2-3704(F):
 - a. Charge for each page or copy per the latest *Copy Charges Memorandum*
 - b. Handling charge - one dollar (\$1.00) plus any postage or shipping cost (cheapest available or as requested by recipient)
 - c. Reasonable costs, not to exceed the actual cost of labor, for additional research required to locate and copy records that are not readily available and if some of the information must be redacted due to part of the record being excluded from disclosure.
 - i. When calculating staff time, the equivalent hourly wage for the employee(s) performing the research, search, or redaction should be used.
 - ii. The cost of employee fringe benefits must not be included in the costs assessed.
 - d. If requested, the cost for providing the records will be submitted to the requester prior to supplying the records.
 - i. If the estimated costs are likely to exceed \$200, an advance deposit (up to the total estimated cost) may be requested before continuing to process the request.
 - ii. If not paid in advance, charges are due upon receipt of the records.
 - iii. A new request for records should not be processed until any amount owed for a previous request that is more than 30 days overdue has been paid.

E. Other Controls on Release of Public Records

1. Operating Procedure 102.7, *Employee Records*, addresses requests for employee information.
2. Operating Procedure 022.1, *News Media Relations*, addresses requests received from news media.
3. Operating Procedure 050.1, *Offender Records Management*, and Operating Procedure 701.3, *Health Records*, address requests for offender record information.
4. Operating Procedure 001.1, *Operating Procedure Development*, provides information on access to redacted documents.

V. REFERENCES

Operating Procedure 001.1, *Operating Procedure Development*
Operating Procedure 022.1, *News Media Relations*
Operating Procedure 025.3, *Public Records Retention and Disposition*
Operating Procedure 050.1, *Offender Records Management*
Operating Procedure 102.7, *Employee Records*
Operating Procedure 701.3, *Health Records*

VI. FORM CITATIONS

None

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years after the effective date.

Signature Copy on File

Harold W. Clarke, Director

12/3/18

Date