

Section 10-3.5. Virginia Freedom of Information Act; public record defined; not required to create a public record; rights of citizens; making a request for public records; penalties for altering or destroying public records; School FOIA Officer; Training required; types of records; commonly used exemptions. —

A. The Virginia Freedom of Information Act (FOIA), located at § 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. Suffolk Public Schools and the School Board complies with the Virginia Freedom of Information Act (FOIA). The policy 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.

Except as otherwise specifically provided by law, all public records are open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of custodian of such records. All requests for information are processed in accordance with School Board Policy Section 10-3.3.

B. 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 record in 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 to the public and may only be withheld if a specific statutory exemption applies.

C. Suffolk Public Schools is not required to create a new record if the record does not already exist. However, Suffolk Public Schools may abstract or summarize information under such terms and conditions as agreed between the requester and Suffolk Public Schools. Public records maintained by Suffolk Public Schools in an electronic data processing system, computer database, or any other structured collection of data will be made available to a requester at a reasonable cost, not to exceed the actual cost in accessing, duplicating, supplying, or searching for the requested records.

D. Citizens of the Commonwealth and representatives of the media have the right to request to inspect or receive copies of public records, or both. Citizens of the Commonwealth and representatives of the media have the right to request that any charges for the requested records be estimated in advance. If a citizen of the Commonwealth or representative of the media believes that their FOIA rights have been violated, the citizen or media representative may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, they may contact the FOIA Council for a nonbinding advisory opinion.

E. Records may be requested by U.S. mail, fax, e-mail, in person or over the phone. FOIA does not require that a request be in writing, nor that it specifically state that records are being requested under FOIA. As a practical matter, it may be helpful to both the requestor and the person receiving the request to put the request in writing. This creates a record of the request. It also gives us a clear statement of what records are requested, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to a FOIA request if it is not put in writing.

A request must identify the records sought with “reasonable specificity.” This is a common-sense standard. It does not refer to or limit the volume or number of records requested; instead, it requires the requestor to be specific enough so that we can identify and locate the records that are requested.

A request must ask for existing records or documents. FOIA creates a right to inspect or copy records; it does not apply to general questions about the work of Suffolk Public Schools nor does it require Suffolk Public Schools to create a record that does not exist.

A requestor may choose to receive electronic records in any format used by Suffolk Public Schools in the regular course of business. For example, if requested records are maintained in an Excel file, the requestor 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 Suffolk Public Schools should have questions about a request, Suffolk Public Schools may request additional information in order to clarify the type of records sought, 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 Suffolk Public Schools may need to discuss a request to ensure that the division understands what records are being sought.

F. Officers, employees, and members of the School Board who fail to provide public records as required by FOIA because they altered or destroyed the requested records with the intent to avoid the provisions of FOIA are subject to penalties in their individual capacity of up to \$100 per record altered or destroyed.

G. The position and contact information for the person designated by the School Board and Suffolk Public Schools as its Freedom of Information (FOIA) Officer is the Public Information Officer for Suffolk Public Schools. The FOIA Officer serves as a point of contact for members of the public in requesting public records and coordinates the School Board’s and Suffolk Public Schools’ compliance with FOIA.

H. The FOIA officer receives training at least once during each consecutive period of two calendar years beginning on the date on which the FOIA Officer last completed a training session from the School Board’s legal counsel or the Virginia Freedom of Information Advisory Council.

I. The following is a general description of the types of records held by Suffolk Public Schools:

- (a) Personnel records concerning employees and officials of BLANK Public Schools
- (b) Scholastic records
- (c) Business and finance records
- (d) Operational records involving support departments such as Technology, Transportation, Facilities, Food Services, etc.
- (e) Agendas, minutes and other records of the meetings of the School Board and committees appointed by the School Board, which can also be found on the division’s website at spsk12.net
- (f) Records of contracts to which BLANK Public Schools is a party

J. The Code of Virginia allows any public body to withhold certain records from public disclosure. Suffolk Public Schools commonly withholds records subject to the following exemptions:

- (a) Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- (b) Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- (c) Vendor proprietary information (§ 2.2-3705.1 (6))
- (d) Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- (e) Records related to critical incident response (§ 2.2-3705.2 (14))
- (f) Scholastic records (§ 2.2-3705.4(1) and 20 U.S.C. § 1232g)

The general policy of Suffolk Public Schools is to invoke (i) the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of Suffolk Public Schools; (ii) the contract negotiations exemption whenever it applies in order to protect Suffolk Public Schools bargaining position and negotiating strategy; (iii) the scholastic records exemption in those instances where it applies in order to protect the privacy of students and comply with other state and federal laws governing the privacy of student records. (Adopted October 13, 2016; Ordinance Number 16/17-26; Effective Date: July 1, 2017; Ordinance Number 21/22-35; Effective: November 4, 2021; Revised/Effective Date: June 9, 2022; Ordinance Number 21/22-43; Ordinance 22/23-108, Revised/Effective: July 13, 2023)

Legal Authority – Virginia Code §§ 2.2-3704, 2.2-3704.2, and 2.2-3714 (1950) as amended.