
IV. Virginia Freedom of Information Act (FOIA) and Virginia Public Records Act (PRA)

A. Virginia FOIA and PRA

The VSB and its boards, committees, conferences, sections, employees, and volunteers are subject to both the:

1. Virginia Freedom of Information Act, Va. Code § 2.2-3700, et seq. and
2. Virginia Public Records Act, Va. Code §§ 42.1-76 - 42.1-91.

FOIA ensures Virginians access to both:

- (1) **public records** in the custody of a public body, its officers, and employees and
- (2) **meetings of public bodies, wherein public business is conducted.**

The Public Records Act (PRA) governs how long a government entity must retain certain records.

RECORDS

Records are broadly defined under both FOIA and the PRA to include all recorded information, whatever the form, prepared or documenting public business.

FOIA — all writings and recordings prepared or owned by, or in the possession of, a public body or its officers, employees, or agents in the transaction of public business. Va. Code § 2.2-3701.

Examples include but are not limited to **emails, text messages, handwritten notes, typewritten documents, electronic files, audio or video recordings, CDs, emails, photographs, or any other written or recorded media.**

Minutes of meetings of public bodies.

Records include **all drafts** and final versions.

PRA — recorded information, regardless of physical form, that documents a transaction or activity by or with any public officer, agency, or employee of an agency.

The recorded information is a public record **if it is produced, collected, received, or retained in pursuance of law or in connection with the transaction of public business.**

The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

Under FOIA, all public records are **open to the public**, unless a specific exemption in law allows the record to be withheld.

FOIA records exemptions include personnel exemptions, the attorney-client privilege, attorney-client work product, and personal contact information, all as defined and limited at Va. Code § 2.2-3705.1.

The Rules of Court, Part Six, Section IV, Paragraphs 10 and 13-30 are treated as exemptions to FOIA.

Paragraph 10-2.E. provides that the records of the Ethics Committee, including Committee deliberations, memoranda, correspondence, and work product shall be confidential and privileged and will not be provided to anyone absent a court order.

Paragraph 10-5.C. provides that communications between Ethics Counsel and members requesting advice are confidential. Likewise, Paragraph 13-30.A. protects disciplinary records as follows:

13-30. A. Confidential Matters.

1. Bar complaints, unless introduced at a public hearing or incorporated in a Charge of Misconduct, when the matter is placed on the public docket, or a Certification.
2. Bar investigations, except Reports of Investigation admitted as exhibits at a public hearing.
3. Impairment proceedings, except the final orders, which are public.
4. Notes, memoranda, work product, research of Bar Counsel.
5. Records, communications, and information protected by RPC 1.6.
6. Subcommittee records and proceedings, except determinations imposing public discipline.
7. Deliberations and working papers of the District Committees, Disciplinary Board, and three-judge Circuit Courts.

13-30. K. Records of the Disciplinary System.

Requests for Information/Records

If you receive any request for information or records in connection with your work with the VSB, please contact your committee, conference, or section liaison. The VSB must timely, within five business days, respond to any request for production, including citing any appropriate exemption and/or producing the non-exempt records.

Retention of Records

- Any records you receive from the VSB are duplicates unless you have taken substantive notes and have documents that should be included as part of the work product of the file.
- If you send an e-mail that relates to the transaction of section business, please either copy or forward to your liaison. Once sent to your liaison, you do not have to preserve it.
- If you create a record outside of what is provided to you by the VSB, please scan or copy it and send it to your liaison.
- Once the VSB liaison is in possession of any records you have created or obtained outside of what the VSB provided to you, you may destroy your case file.
- Try not to commingle personal and official emails. Private emails do not need to be retained; emails relating to the transaction of public business do. When sending emails or otherwise acting on behalf of the VSB, please be mindful of the fact that you are creating a public record.
- If you have any questions, please do not hesitate to call your liaison.

MEETINGS

FOIA requires that all public bodies:

- post notice of meetings at least three working days in advance of the meeting;
- ensure the meeting is open to the public; and
- take and preserve minutes.

A meeting is defined as three or more members of the public body, or a quorum if the public body is less than three members, where public business is transacted or discussed, whether or not minutes or votes are taken. To avoid an accidental electronic meeting, please do not email more than one other member about VSB business, and **please do not hit reply all** if other members of the committee are copied on the email. Please use the “bcc” (blind carbon copy) option when emailing a group. For a helpful discussion about this topic and other FOIA questions, please see the following publications by the Virginia FOIA Council: *A Guide to the Virginia Freedom of Information Act for Members of Boards, Councils, Commissions, and other Deliberative Public Bodies* and *E-Mail: Use, Access & Retention* at <http://foiacouncil.dls.virginia.gov>.