



# Technology and Public Access

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# Purpose of FOIA

- **... The affairs of government are not intended to be conducted in an atmosphere of secrecy ...**
- **The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons governmental activities and afford every opportunity to citizens to witness the operations of government.**
- **... all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open ...”**
- **Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt.”**



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**How much access does the  
public really have ...**

**A lot!**



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**And to what  
information?**

**Any public record  
not specifically exempt**



# What is a Public Record?

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**“all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, 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.”**



# What is a Public Record?

- all writings and recordings ... however stored, and regardless of physical form or characteristics
- Prepared, owned by, or in the possession of a public body or its officers, employees of agents
- Related to the transaction of public business.



# What is Exempt?

- Currently over 100 exemptions in FOIA
  - 12 general exemptions
  - 11 public safety exemptions
  - 12 exemptions for administrative investigations
  - 6 exemptions for education records
  - 18 exemptions for health and social service records
  - 20 exemptions for proprietary records and trade secrets
  - 12 exemptions for records of specific public bodies



## Specific Exemption(s)

“Working papers and correspondence of the Office of the Governor\*; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision; or the president or other chief executive officer of any public institution of higher education.”

\*Includes the Governor, his chief of staff, counsel, director of policy, Cabinet Secretaries and the Director of the Virginia Liaison Office.



# What is a Working Paper?

“Working papers” means those records prepared by or for [a named public official] for his personal or deliberative use.

- Governor, his chief of staff, counsel, director of policy, Cabinet Secretaries and the Director of the Virginia Liaison Office
- Lt. Governor
- Attorney General
- Members of the General Assembly and Division of Legislative Services
- Mayor or chief executive officer of any political subdivision
- President or chief executive officer of any public institution of higher education in Virginia



# What is Generally Exempt?

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- Personnel records
- Attorney Work Product
- Tests and Examinations
- Computer software and proprietary vendor information
- Real estate appraisals prior to sale or purchase
- Contracts (during negotiations)
- Engineering and Construction Plans
- Security Systems and Security of Facilities
- Plans to respond to terrorists activity
- Student Scholastic Records
- Criminal and Investigative Records
- Health Records
- Trade Secrets
- **Personal information on citizens**



# Email

- **Access**

- Is it a Public Record?

- Is there a specific exemption?

- **Retention**





# Databases





# Definition of Public Records includes databases

## §2.2-3707 –

- Public Records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available ...
- When electronic or other databases combined or contain exempt and nonexempt records, the public body ... shall provide access to the nonexempt records as provided by this chapter.
- Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester... if that medium is used by the public body in the regular course of business.

# Personal Identifying Information





# Personal Identifying Information

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- Private Sector and Commercial Transaction restrictions
  - Prohibiting mailing documents if SSN is visible
  - Prohibiting transmission of SSN over the Internet unless the connection is secure or encrypted.
- Restricting display on government ID cards



# Personal Identifying Information

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- Presumption SSNs are private
- Prohibiting collection unless authorized or collection is imperative for the performance of duties
- Penalties for failure to segregate SSNs from public records
- Penalties for intentional release or restrictions on release

# Personal Identifying Information





# Open Meetings

- **Email as a Public Meeting**
- **Teleconferences**

*“Though the [FOIA] council... believes that technology can protect and, in some instances, even expand public monitoring of and participation in the affairs of government, it has also concluded consistently that the cause of representative democracy is best served when face-to-face meetings of public officials are standard, rather than the exception. The dynamics of having policy makers, staff, and the general public in the same room cannot be replaced by audio device, and are limited even where full audio/visual connections are possible. Persons who accept elected or appointed public office accept certain responsibilities, which, the Council believes, include their regular participation in face-to-face public meetings.”*



# Resources

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<http://www.opengovva.org>

<http://dls.state.va.us/foiacouncil.htm>