



Virginia's open records law presumes everything is public
Scholars, officials and the public say access to information is vital in a democracy

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You receive your real estate assessment and wonder if it accurately reflects the value of your home compared to those of your neighbors.

An entrepreneur wants to start a business near your home and you want to know how it will affect traffic on your street.

The president of the United States visits town and you wonder how much the visit cost your locality.

You want to know how much your school division pays its teachers.

All you have to do is ask.

A 45-year-old state law gives you the right to request that information and more from state and local governments, departments, agencies and school divisions.

The Freedom of Information Act (FOIA) of Virginia presumes everything is public, said College of William and Mary political science professor John McGlennon, who also is a member of James City County's Board of Supervisors.

Virginia's law, and those of 49 other states, was modeled on the federal FOIA signed into law by President Lyndon Johnson in 1966. FOIA laws also are called Sunshine laws because of their focus on transparency and accountability.

Exercising a right

Virginia's law, like that of the federal government, applies to both public information and meetings. According to the Virginia Press Association the law was overhauled in 1999 and has been tweaked since then.

The range of data available to the public is wide, from real estate assessment, to car ownership to public salaries to health department inspections of restaurants, from reports requested by governments to the status of applications for zoning revisions or special-use permits to property transfers.

"The definition of a public record is pretty broad," said William and Mary law professor Jim Heller.

Hampton resident Gaylene Kanoyton-York put it bluntly: "Anything from a public office means it is public information. ... We can exercise our right to get any information we want under FOIA."

The presumption of the law is that government information is available to the public unless specifically exempt by an exception in the open records law or another law.

Scholars, advocates and citizens noted the importance of such laws to the health of democracy.

"People need to know what is happening in government," McGlennon said. "They need to know what factors influence the decision-making process.... People need some sense of accountability."

"Not much of what government does shouldn't be accessible," Heller said. "We're entitled to know how and where taxpayer dollars are spent."

Williamsburg resident Beth Haw, who follows government and school division activity in her community, agrees.

"I think transparency is important for us to trust the system," Haw said.

Megan Rhyne, executive director of the Virginia Coalition for Open Government said citizen input is vital to the health of the democratic process at all levels. "Citizens' voices should be heard. They should know what their government is doing. Access to meetings and information is critical."

Making decisions in life

Rhyne said access to such information helps citizens make better decisions at the ballot box, and in life.

Public information extends beyond budgets, meeting minutes and property transfers. For example, someone who needs to move a relative to an assisted living facility can access information on such facilities in their community and look up complaints, staffing, health inspections and ratings, among other data.

Parents considering a move to a community can look at a school division's attendance records, test results, dropout and graduation rates, budget, course offerings and staff experience.

Kanoyton-York had concerns about a proposal by Hampton City Schools to change high school students' schedules. She knew the division had requested a report on block scheduling in 1996 and she asked for it.

"I got the study," she said.

Concerns about exemptions

But advocates and scholars, including Rhyne and Heller, note the state legislature has taken action over the years to exclude some information from public view.

During the 2013 General Assembly session legislators approved several bills that exempt some information from public access, such as concealed weapons permits, email correspondence between legislators and their aides and emergency plans for hospitals and assisted living facilities.

"Bills both good and bad were sent to the FOIA Council," Rhyne wrote in a blog post recapping the session. But the good bills, to make sure citizens know of any costs associated with FOIA requests from state agencies, and a bill requiring online posting of budgets before any vote, were not approved. The bills with exemptions passed both houses.

Heller said the state FOIA contains more than 100 exemptions which provide officials the opportunity to shield information from public view. He said many are reasonable, such as student records and medical records. But he worries about moves to add to that list.

"States say sunshine is good, but then they create exemptions in their sunshine laws," he said.

State Sen. Thomas K. "Tommy" Norment, R-Williamsburg, said some of the decisions in the recent General Assembly session were reasonable. He said constituents often contact their representatives about sensitive situations or information, and aides communicate with the senators and delegates about such things via email.

Shutting down discussion

Rhyne and others also noted that elected and appointed officials are not always fans of sunshine laws. Rhyne referred to a recent Washington Post story in which a member of the University of Virginia Board of Visitors said the law got in the way of government.

"There is some sympathy for that," Rhyne said.

Norment said some elected officials are uncomfortable negotiating or holding extensive debates in the public eye, which at the state level, often means in front of reporters rather than the general public. He offered the example of a 2012 budget conference at which a blogger observing the session posted live updates.

"It totally shut down discussion," he said.

William and Mary's Heller said he understands why elected and appointed officials "might not want the public to be involved in some discussions, but that flies in the face of open government."

Personal use of FOIA

While journalists and other media professionals often use FOIA requests to access data in their roles as watchdogs for the public, the majority of such requests come from citizens, organizations, businesses and others, according to local officials.

"We get more inquiries from nonjournalists," said Kim Lee, communications manager for the city of Newport News. "We get a fair share of requests from citizens."

"I'd say it's primarily from citizens," York County communications director Gail Whittaker said.

Of the 44 official FOIA requests James City County received in 2012, only three were from reporters, according to Jody Puckett, communications director for the county.

"Those numbers don't count the number of people just calling up and asking, 'Hey, can you get me this information?'" Puckett said.

"Citizens tend to be looking for specific information," Rhyne said. "Citizen use of FOIA is much more personal."

Jumping through hoops?

So, what do you need to do to request information?

Ask.

"Sometimes there is the assumption that government won't provide people the information they want without a FOIA request," McGlennon said. "They leap to the FOIA when a simple request will do."

Lee believes citizens should not have to go through a formal process to ask for information.

"Most of the time, citizens don't understand they are making a FOIA request just by asking for information," she said. "They don't have to say the magic words."

Citizens are not required to explain why they want the information, nor can a government employee ask a citizen for reasons.

But McGlennon and others note government staff members can make the process vexing. And employees unsure of whether they can release information can be reticent to do so, erring on the side of discretion. Rhyne said they also worry about making mistakes.

Haw said she often was frustrated when asking for public records from her community's school division.

"You get information, but it's not exactly what you want," she said.

McGlennon said some localities and agencies do make citizens "jump through more hoops" or follow specific procedures when requesting information. That is counter to the spirit of the law.

Political science professor Quentin Kidd, who also directs the Wason Center for Public Policy at Christopher Newport University, agrees. "If as a citizen I ask for something, it has to be treated as a FOIA request, and that is at any level of government. ... There is very little information that is restricted in the law."

Tips for asking for public information

- Virginia citizens may request a wide range of information from state and local governments, agencies, departments and school divisions. Any request for information should be treated as a FOIA request, but citizens can make their requests formally, invoking the law, either via phone call or email or letter.
- It helps to be as specific as possible. Know what you want.
- Agencies must respond to a FOIA request within five working days. If the agency cannot comply with the request in that time, it can extend the deadline by seven working days, but must notify you of that action within the five-day response time.
- State and local governments can charge fees for finding and compiling the information, and for computer time and copying.
- For more information, visit the Virginia Coalition for Open Government website:
<http://www.opengovva.org/>

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