

2. The Director's Office shall indicate the date, time, method of receipt and person receiving the document on the front page of the subpoena, process or notice.
3. The Director's Office shall immediately forward all non-personnel service to the Public Records and FOIA Manager. In the Public Records and FOIA Manager's absence, all documents shall be forwarded to the Policy, Planning and Public Records Director or the Deputy Director for Compliance and Investigations.
4. The Director's Office shall send a facsimile of all service related to personnel matters to the Office of the Attorney General and immediately deliver the document to the Human Resources Section.

B. PUBLIC RECORDS SECTION RESPONSIBILITIES

The Public Records and FOIA Manager shall review all documents served on the Department to identify those that warrant delivery to the Office of the Attorney General; determine whether testimony and/or records are required; and the appropriate individual/section to receive the service. In the absence of the Public Records and FOIA Manager, the Policy, Planning and Public Records Director or the Deputy Director for Compliance and Investigations shall perform the initial review. The Public Records Section shall maintain an electronic copy of all documents and log for tracking all service received by the Department.

1. Subpoena duces tecum

- a. All records released in response to a subpoena duces tecum shall bear the official seal of the Department of Professional and Occupational Regulation.
- b. Records released in response to a subpoena duces tecum shall be authenticated by the record custodian and the person to whom the custodian reports on the face of the documents as true copies of the original records [§54.1-112](#) of the *Code of Virginia*.
- c. A subpoena duces tecum for statutorily exempt information that may compromise the integrity of the Department's licensure, mediation, conciliation or investigative processes (e.g., examinations, confidential dispute resolution materials, active investigations of unlicensed activity) or other protected information/documents (e.g., nine-digit social security numbers, medical records, tax records) shall be handled in the following manner.
 - 1) All non-exempt documents shall be copied and certified in their entirety pursuant to §54.1-112 of the *Code of Virginia*.
 - 2) All statutorily exempt information and documents shall be redacted and/or removed from the subpoena response.
 - 3) A cover letter stating the style of the case; name of the court; identification of the contents (i.e., "documents presented pursuant to subpoena duces tecum issued on [date] by [issuing party]"); and applied exemptions (i.e., "pursuant to [applicable statute], the following protected information/documents have been redacted/excluded from this response") shall accompany the response.
 - 4) A copy of the subpoena duces tecum shall be attached to the subpoena response package.

2. Testimony

- a. The Public Records and FOIA Manager, upon request by the subpoenaed individual, shall contact the issuing party to determine if a License Transcript or other authenticated records would be an acceptable alternative to personal testimony. The Public Records and FOIA Manager shall be responsible for obtaining the proper written releases from a subpoena if documents are accepted in lieu of the requested testimony.
- b. The person named in the subpoena is responsible for ensuring compliance with the terms of the subpoena. This includes being prepared to testify at any criminal, civil or administrative proceeding at the time and place designated on the subpoena.

Procedure Title:	Director's Policy #100-06 Subpoenas, Service of Process and Notices	Effective:	09/18/2009
Submitted By:	Dawn Waters, Policy Planning & Public Records Director	Guidance Document:	Yes
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3. Appeals

- a. After entering the appeal documents in the electronic database and converting the documents to electronic format, the Public Records and FOIA Manager shall arrange for hand delivery of all original copies of Notices/Petitions for Appeal to the Office of the Attorney General. A copy of the notice/petition and the OAG transmittal letter shall be forwarded to the appropriate Executive Director. Copies of Real Estate and Contractor Transaction Recovery Fund appeals shall be forwarded to the Recovery Fund Administrator in the Administrative Proceedings Section.
- b. Within two days of receiving a Notice/Petition for Appeal, the appropriate Executive Director is responsible for contacting the Office of the Attorney General and coordinating any response and appeal record preparation with board counsel. The Executive Director is responsible for preparing and certifying the appeal record according to any requirements set forth by the Office of the Attorney General and Rule 2A:3 of the *Rules of Supreme Court of Virginia*. Each Executive Director shall designate a person who shall be responsible for record preparation in their absence.

4. Long Arm Statute Compliance

- a. The Public Records and FOIA Manager shall forward all process served on the Department pursuant to Title 54.1 to the appropriate Executive Director to mail to the regulant's last known address of record.
- b. The Executive Director shall retain any undelivered documents that are returned to the Department for a period of three years.

C. IMMEDIATE REFERAL TO THE OFFICE OF THE ATTORNEY GENERAL

- 1. The Public Records and FOIA Manager is responsible for hand delivery of original service to the Office of the Attorney General in the following situations:
 - a. Appeals of case decisions involving an applicant or licensee
 - b. Appeals of case decisions involving the Real Estate or Contractors Transaction Recovery Fund
 - c. Service on the Director pursuant to the Long Arm Statutes in Title 54.1 of the *Code of Virginia*
 - d. Any service, which names the Department, any regulatory board within the Department, any board member or any Department employee as a defendant
 - e. Service on any board member
 - f. Service or delivery of any documents, notices, petitions, etc. that call for a Department response within a specified period of time
 - g. A subpoena duces tecum for statutorily exempt information that may compromise the integrity of the Department's licensure, mediation, conciliation or investigative processes (e.g., examinations, confidential dispute resolution materials, active investigations of unlicensed activity)
 - h. A subpoena duces tecum served on the Department less than five workdays prior to the date for compliance
- 2. In situations when the time for compliance with a subpoena duces tecum issued by an attorney (pursuant to [§16.1-89](#) of the *Code of Virginia*) is less than fourteen days after service of the subpoena, and the Director deems there are grounds for objecting to the subpoena, the Policy, Planning and Public Records Director shall contact the Office of the Attorney General.
- 3. The Policy, Planning and Public Records Director shall immediately notify the Office of the Attorney General of any service received by the Department that is not covered in Sections B or C of this policy.

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