

Department of Mines, Minerals and Energy
Responding to Requests for Information

The purpose of this document is to establish how DMME responds to requests from outside parties for copies of agency records. The requirements apply uniformly to all divisions and offices of the Department of Mines, Minerals and Energy (DMME). Any questions about the requirements should be directed to the DMME public relations manager.

*“The affairs of government are not intended to be conducted in an atmosphere of secrecy, since at all times the public is to be the beneficiary of any action taken at any level of government.”
Virginia Code Section 2.2-3700.*

BACKGROUND

I. Basic Philosophy

In keeping with the intent of the General Assembly in its adoption of the Virginia Freedom of Information Act, the policy of the department is to conduct its business as openly as is practicable. DMME employees are expected not only to meet the minimum requirements of the Act, but also to endeavor to provide the public with easy access to information about the activities of the department. When information is requested, DMME employees are expected to respond quickly and thoroughly. Maximum time limits prescribed in the law may be used only when employees are unable to respond more quickly.

II. Exceptions

All information, regardless of its type, form, or format shall be released on request except when it is specifically exempted from the disclosure requirements of the Freedom of Information Act (FOIA). The FOIA, in Section 2.2-3705, provides a list of the kinds of information that may be withheld from public view. These exemptions are discretionary, but the department has concluded that the information covered in Section 2.2-3705 should not be released except under the most extraordinary circumstances. Under such circumstances, the information shall only be released with the approval of the public relations manager and with the express written consent of the director. Other types of information may not be released to the public under any circumstances, because disclosure is prohibited by state or federal law. Exemptions that apply to the department are listed in Part III of the procedures below.

Exemptions are not valid if they are based solely on state regulations, policies or established practices, without corresponding basis in law. Exemptions based on federal regulations may be valid if it has been shown that the federal and state requirements conflict.

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III. Standards for Approval of Procedures

This document provides standards for procedures to respond to requests for agency records and information. Each division, office, or employee that handles public requests for information may develop procedures for carrying out the routine activities of responding to requests. Such procedures shall comply with the requirements set forth in this document. Procedures for responding to information requests shall be reviewed by the Office of Program Support and approved by the public relations manager prior to implementation.

Division procedures that deal with confidentiality of information shall comply with the requirements of this document, and may not be implemented until reviewed by the Office of Program Support and approved by the public relations manager.

PROCEDURES

I. Public Access to Agency Records

Any person may request to see and duplicate any official records of the department in person, in writing, by telephone, by facsimile or electronic mail. The FOIA allows up to five working days to respond to a request for information. This period of time begins when the request is received by any office or employee of the department. This includes cases in which a field inspector receives a request in the field. The Virginia Coal Surface Mining Act further requires all public DMLR permit information to be made available immediately to the public.

The policy of DMME is to provide requested information immediately, whenever possible. The keeper of the records may need time to determine whether the requested information is available, to determine whether any of the information is confidential, or to determine the best method of providing the requesting information. In such cases, the custodian must work within the time limits allowed by law, and should contact the public relations manager if deciding to hold the information confidential.

The initial response to a request for information may take three forms:

- The requested records will be provided to the requester within five working days of receiving the request.
- The requested records will be entirely withheld because their release is prohibited by law. The agency response must be in writing; identify with reasonable particularity the volume and subject matter of withheld records; and cite the specific Code section which authorizes the withholding of the records.

- The requested records may be provided in part and withheld in part because the release of part of the records is prohibited by law. The agency response must be in writing; must identify with reasonable particularity the subject matter of withheld portions; and must cite for each category of withheld records the specific Code section which authorizes the withholding of the records. When a portion of a requested record is withheld, the agency may delete or excise only that portion of the record to which an exemption applies and must release the remainder of the records within five working days from receipt of the request.
- If it is not practically possible to provide the requested records or to determine whether they are available within the five workday period, the agency must respond in writing and specify the conditions which make a response impossible. If the response is made within five working days, the agency will have an additional seven workdays to provide one of the three preceding responses.

Any decision to deny public access to agency records (whether full or partially) must be approved by the DMME public relations manager prior to informing the requesting party that the records may not be viewed. The custodian of the records should contact the public relations manager immediately when he or she believes that a request may be denied, when the records cannot be provided within the legal time limits, or when the custodian takes the additional seven-day period to respond.

Releasing the names of persons who have filed complaints with DMME has been an issue. DMME will not voluntarily release the name of any person who has made a complaint. However, we cannot hold this information confidential if a person requests the information except when the request is exempted from disclosure Section 45.1-161.97 of the Code of Virginia.

Divisions and offices that act as keepers of agency records shall use form DMME-IR-1 to record request for information and responses. A person requesting information from DMME shall fill out the request form whenever possible. However, the agency may not deny a request for information simply because it was not presented on the DMME form. Requests for information by telephone and letter are acceptable. The keeper of the records must provide special assistance or accommodations on request from any disabled person. Offices that are responsible for providing information to the public also are responsible

II. How to Provide Requested Information

Divisions and offices that regularly receive requests for agency records and information should provide the public with an area suitable for reviewing the information. Staff should be available to assist people who come to agency offices to view agency records.

The FOIA allows public agencies to charge for the actual cost incurred for copying, staff time, and computer time used to provide public information. No fees charged may exceed the actual cost of providing the information. When a request is received from the party seeking records, the agency shall provide an estimate of the cost. If the estimate of the cost of providing the information exceeds \$200, then the custodian may require the requesting party to pay in

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advance an amount not to exceed the estimated cost. The period within which the agency must respond to the request will be tolled for the time that elapses between notice of the advance determination and the response of the requester. Funds for copying records should be received and processed according to established fiscal procedures.

Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data must be made available to a requester at a reasonable cost not exceeding actual costs. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but must provide access to the nonexempt records.

DMME will provide a certain amount of information free of charge to the public. All printed regulations and brochures are available free. No charge is required for the first \$5.00 of photocopied materials, maps, or computer printouts per visit, unless the DMME public relations manager determines this privilege is being abused. Charges are 25 cents per page for black and white copies, one dollar per page for color copies, and 10 cents per page for computer printouts. Charges for copies of maps and drawings larger than 8.5" x 14" vary. Any geological data will be distributed in accordance with methods and prices set by the Division of Mineral Resources and the Division of Mined Land Reclamation. Charges for computer time will be determined jointly by the DMME public relations manager and the data processing manager.

The FOIA requires public records to be made available in the formats compiled by the agency. Public agencies may refuse to grant requests for records to be compiled in a format not normally used by the agency. The basic principle of this requirement is that public agencies should not be expected to provide the public with customized reports, or to conduct research on request for the public. When anyone in the agency refuses to provide information in the requested format, he or she should inform the requesting party of the format in which the information is normally available. The custodian of the records shall inform the public relations manager immediately when he or she plans to deny such a request.

From time to time, however, DMME divisions and offices may wish to compile reports of enforcement statistics, to generate customized computer reports, or to prepare custom reports because of special circumstances. Requests from blind or disabled citizens may also require special attention. All such requests should be submitted to the DMME public relations manager. The rule of thumb in responding to such requests is to determine whether a request can be granted without undue strain on the workloads of staff, but other factors might apply. The review also should consider whether the agency should charge the requesting party of the staff time involved in answering the request. The DMME public relations manager, in coordination with appropriate staff, may determine charges for customized reports.

III. Information Exempt from Disclosure

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. 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 pursuant to this chapter or other specific provision of law. Va. Freedom of Information Act (Section 2.2-3700)

Information on the two lists below should not be disclosed to the public. The first list is based on exclusions in Section 2.2-3702 of the FOIA. Section 2.2-3705 gives the custodian of records the discretion to withhold certain information from public view because release of the information could seriously hamper the agency's ability to carry out its business. The director of DMME has decided that no records exempt under Section 2.2-3705 shall be released except under extraordinary and compelling circumstances when the director determines the information should be released for the public good. This means that information on the first list almost never is released.

The second list is based on confidentiality that is mandated by state and federal law. This means that the information on the second list never will be released except under the circumstances specified in the law.

When the keeper of records receives a request for records that are exempt from disclosure, he or she should inform the DMME public relations manager immediately of the request. Whenever a request for information is denied, the denial should be in writing and should state the reason for denying the request, with reference to the specific section of the law which exempts the information from public disclosure. See Section 2.2-3705 of the Code for complete descriptions of exemptions.

1. Section 2.2-3705 exemptions:

- Memoranda, correspondence, evidence, and complaints related to criminal investigations, including internal administrative investigations that could lead to criminal charges.
- Any writing protected by attorney-client privilege.
- Memoranda, working papers, and records compiled specifically for use in litigation.
- Security manuals and other materials containing information vital to agency security, including security of computer systems and telephone systems.
- Memoranda, legal opinions, working papers and records recorded or compiled exclusively for a closed session of an appointed board.

- Computer software developed by a state agency. And vendor proprietary information software which may be in the official records of a public body.
 - Appraisals and cost estimates of property being considered in pending sales or leases.
 - Information furnished to the State Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Internal Auditor on pending investigations.
 - Personnel records containing information concerning identifiable individuals unless the person that is the subject of the personnel records waives, in writing, this protection.
 - Tests and examinations prepared or used to evaluate the qualifications of an applicant for a certificate, license, employment, retention, or promotion.
 - Investigative notes and other correspondence and information furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training.
 - Working papers, and correspondence prepared for or by 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 of the Commonwealth; or the president or other chief executive officer of any public institution of higher education.
- Proprietary records submitted by private energy suppliers to DMME which are used for contingency planning or for compiling statistical information on suppliers.
 2. Information kept confidential by other specific provisions of state or federal law:
 - Underground coal and mineral mine maps kept on file at DMME, unless the source of a map consents in writing to its release. People who own, lease, reside on or have an equitable interest in surface areas or minerals within 1,000 feet of a mine may obtain copies of portions of the maps showing areas adjacent to their property; however, they shall submit to the director or chief written proof of their interests and sworn affidavits that they have a proper legal or equitable interest. Local governments requesting such maps may not provide them to a person without a legal interest in surface areas or minerals within 1,000 feet of the mine, without the consent of the operation. (Code of Virginia 45.1-161.64 C, E and F)

- No person shall give advance notice of mine inspections without authorization of the director. Any information obtained in connection with an inspection that reveals a trade secret is not to be disclosed. (Code of Virginia 45.1-161.84)
- The department should not disclose the identity of any person who reports an alleged health or safety violation. (Code of Virginia 45.1-161.97)
- Information submitted as part of an application for a DMLR coal exploration permit that the applicant states contain trade secrets or privileged commercial or financial data related to competitive rights. (Code of Virginia 45.1-233)
- Logs, surveys, and reports filed in connection with exploration for uranium shall be kept confidential for two years. Upon request from the permitted operator, these files shall be kept confidential for an additional two years. (Code of Virginia 45.1-285)
- Logs, surveys, and reports filed in connection with drilling, completion, and testing of a development well for gas and oil shall be kept confidential for 90 days after completion of the well, or 18 months after the total well depth is reached, whichever occurs first. Upon request from the permitted operator, records filed in connection with an exploratory well or corehole shall be kept confidential for two years after completion or four years after total well depth is reached whichever occurs first. The gas and oil inspector may grant requests to extend the period farther for exploratory wells. However, for wells drilled through coal seams, coal owners may request surveys and logs down to the lowest known coal seam. (Code of Virginia 45.1-361.6)
- All proprietary information and statistics used in geologic research by DMR shall be kept confidential unless the owner of the information consents to its release. (Code of Virginia 45.1-385)
- Cost estimates related to a proposed procurement transaction prepared by or for a public body. (Code of Virginia 2.2-4342)
- Financial-disclosure statements submitted by agency employees to comply with the prohibition against conflicts of interest with regulated coal mining operations. (Code of Virginia 45.1-231)
- Vendor proprietary information regarding computer software. (U.S. Copyright Law)
- The Department of State Internal Auditor will release any hotline complaint investigation data. (Code of Virginia 2.2-3705:43)
- Annual reports submitted to DMME under the Mineral Mine Safety Act regarding tonnage, hours worked and mining methods. (Code of Virginia 45.1-161.292:35.C)