

VIRGINIA FREEDOM OF INFORMATION ACT



**Maria J.K. Everett, Executive
Director**

**Alan Gernhardt, Staff Attorney
VA Freedom of Information
Advisory Council**

VA Freedom of Information Advisory Council, a state agency

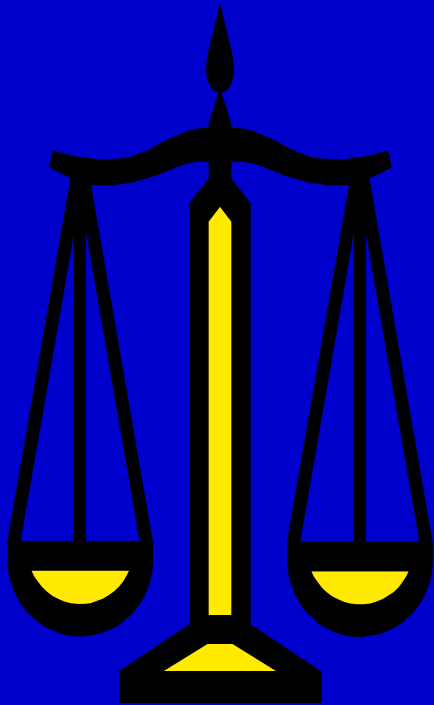
- *Issues advisory opinions*
 - written, oral, email
- *Provides FOIA training*
 - Biennial FOIA Roadshow
 - Specialized training upon request
- *Publishes educational material*

PURPOSE



- SINGLE BODY OF LAW
- EVERY DAY APPLICATION OF *“GOVERNMENT OF, BY AND FOR THE PEOPLE”*
- PREDICTABLE BEHAVIOR BY GOVERNMENT
- PROCEDURES TO BE FOLLOWED

FOIA IS A BALANCE



RIGHT OF ACCESS

Versus

**NEED OF
GOVERNMENT
TO FUNCTION**

PUBLIC RECORDS

- Regardless of physical form or characteristic;
- However stored;
- **Owned or prepared by or in the possession of a public body or its officers, employees, or agents in the transaction of public business.**

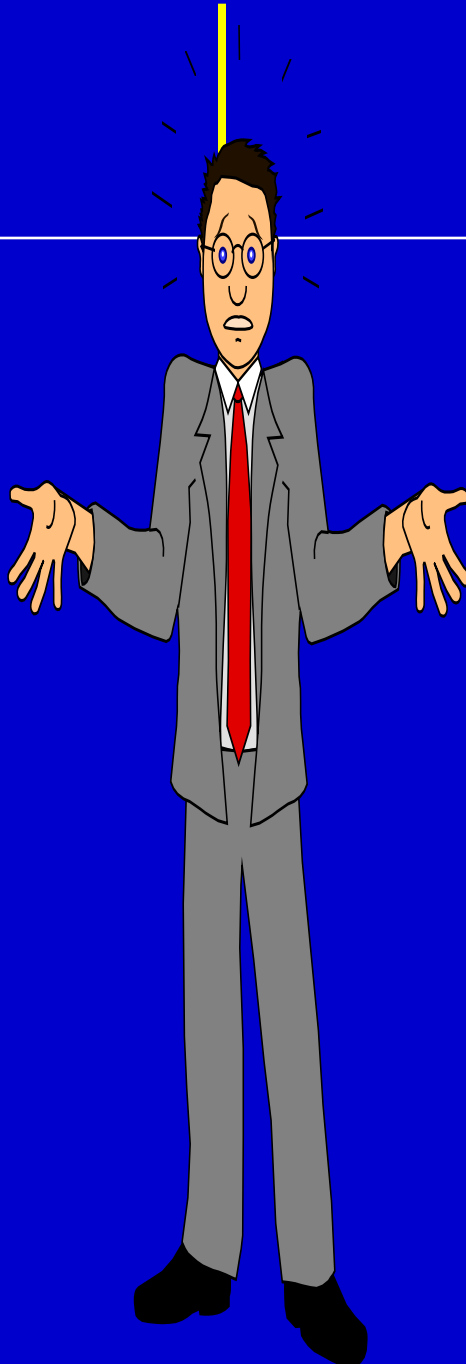
Debunking FOIA

Myths

- **RECORDS not explanations**
- **Inspect or Copy**
- **Not free**
- **FOIA doesn't *prohibit* release**
- **Informal vs. formal requests**

FOIA REQUESTS

DON'T HAVE TO:



BE IN
WRITI
NG

SAY
“FOIA”

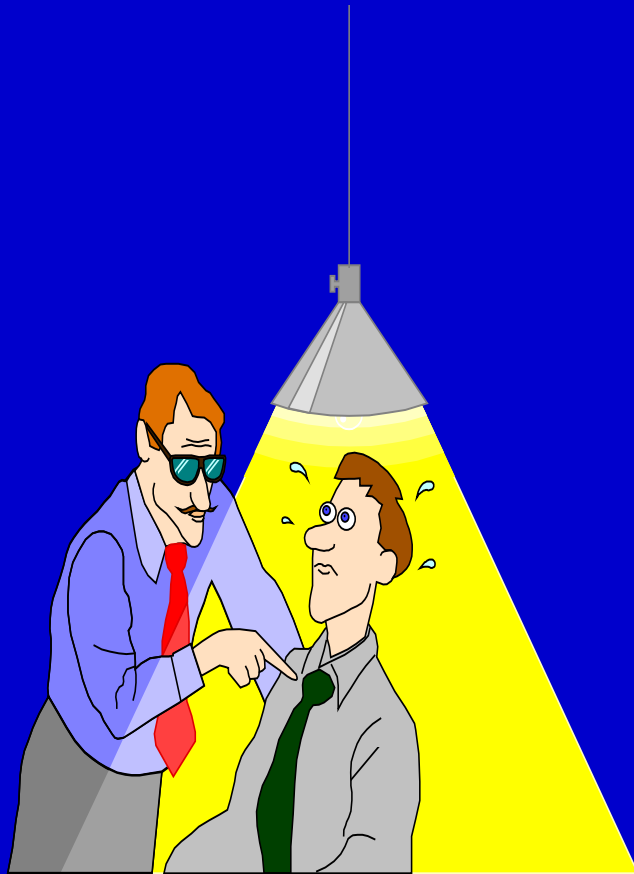
WHO HAS FOIA RIGHTS

- VIRGINI
A
CITIZEN
S

- MEDIA



MOTIVE IMMATERIAL



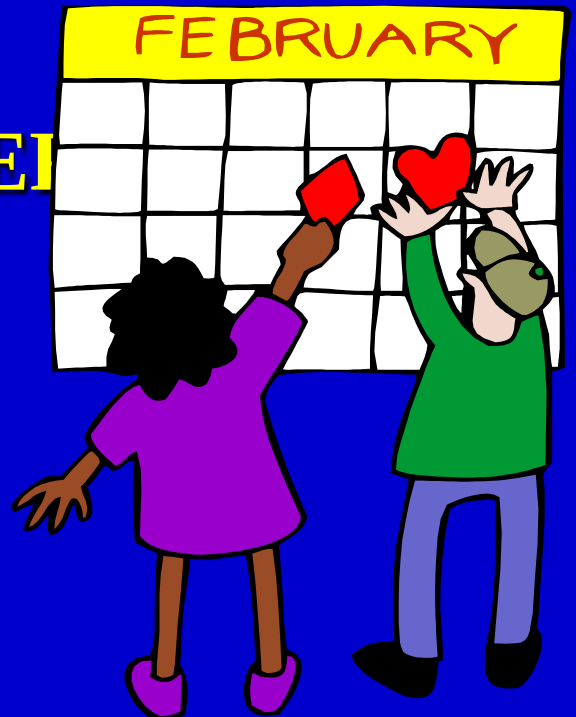
FOIA REQUIRES

5 WORKING DAYS

TO PRODUCE RECORDS

-OR-

TO MAKE OTHER
RESPONSE



RESPONSES

- YES, here are the records
- We need more time
- NO, records or portions exempt
- Records don't exist OR can't be located

5 DAYS

5 DAYS

5 DAYS

5 DAYS

5 DAYS

5 DAYS

5 DAYS

5 DAYS



"Your FOIA request has been rejected and your dog has been cast out."

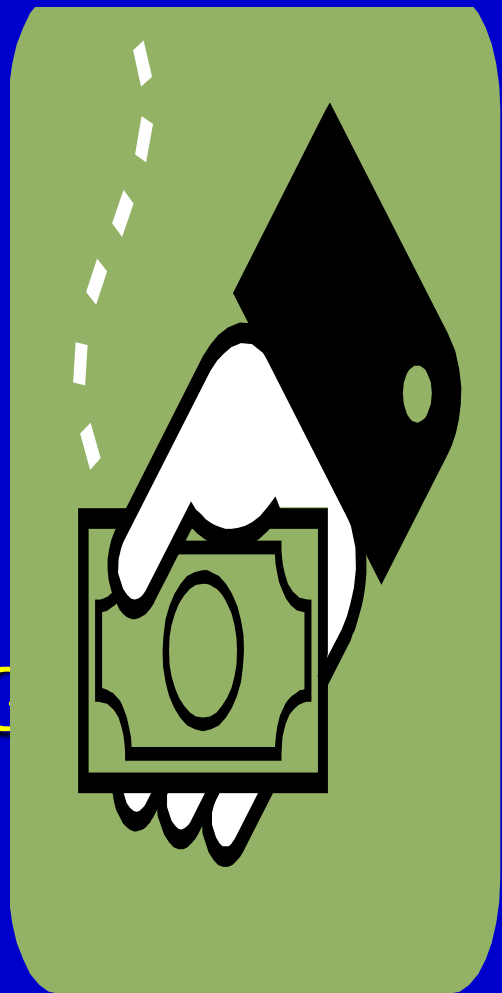
CHARGES

- **SEARCH COSTS**

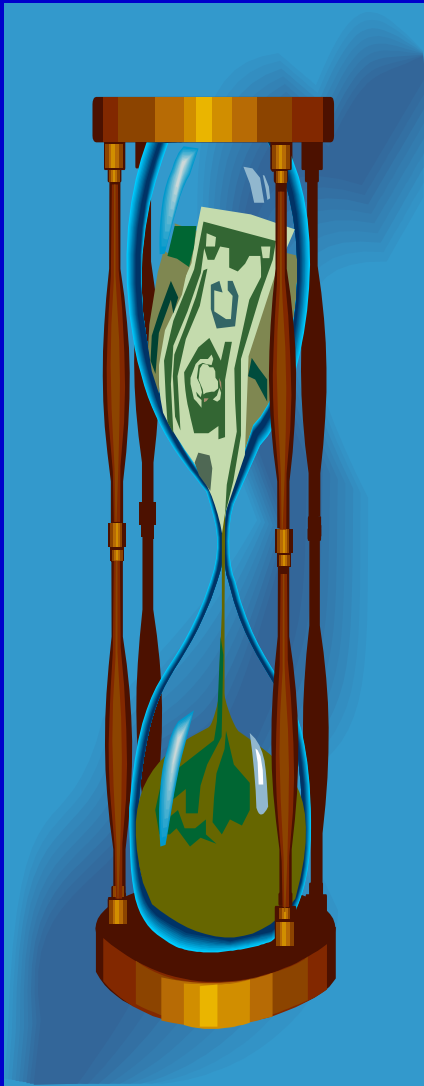
- **ACCESSING**

- **SUPPLYING**

- **DUPLICATING**



ACTUAL COSTS ONLY



- Hourly rate
- NO fringe benefits
- Administrative act
- Reasonable, too.

CHARGES; ADVANCE DEPOSIT



- More than \$200
- Estimate Required
- Money Up Front

ENFORCEMENT

T

- **Failure to follow FOIA deemed violation.**
- **FOIA Suit by aggrieved party**
- **Burden of proof on Government**

PENALTIES



- Pay legal bills of petitioner
- Mandamus or Injunction
- BAD PRESS

PENALTIES

“Knowing” and “Willful” Violations



- Up to \$2,000 for 1st violation.
- Up to \$5,000 for any subsequent violation.
- Paid by violator, not the agency!

Advisory Opinions

- VA Freedom of Information Advisory Council
- Attorney General



Remember

- Call FOIA Council with ANY questions.
- There are NO stupid FOIA questions.
- Set “institutional culture” for compliance with FOIA.
- FOIA says —How and When to *ACT*; Not how to *FEEL*.
- It is NOT our individual sense of fairness, but the collective sense expressed in the law.



FOIA COUNCIL

- 1-866-448-4100 (toll free)
- 804-225-3056
- Email:

foiacouncil@dls.virginia.gov

- Website:

<http://foiacouncil.dls.virginia.gov>