Gmail [redacted]

Request for an Advisory Opinion

FOIA Council <foiacouncil@dls.virginia.gov> Fri, Mar 13, 2026 at 2:32 PM
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FOIA policy in Va. Code § 2.2-3700(B) states: "Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked." FOIA's policy statement set forth in Va. Code § 2.2-3700(B) directs that "[a]ny 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." This FOIA principle is referred to as "the narrow construction rule" and it provides that exemptions shall be interpreted as narrowly construed in favor of disclosure. FOIA policy further provides: "All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested."

Va. Code § 2.2-3705.7(7) provides the custodian with discretion to withhold from disclosure "customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address" when requested. The custodian may withhold customer account information including the customer's name and service address, but the custodian may release this information if the custodian chooses to do so. However, Va. Code § 2.2-3705.7(7) excludes "the amount of utility service provided and the amount of money charged or paid for such utility service" from the provisions of this discretionary exemption. It is an exception to the exemption. Therefore, the custodian does not possess discretion to withhold this information from disclosure. If requested, the custodian should disclose "the amount of utility service provided and the amount of money charged or paid for such utility service."

In general, this office is unable to tell whether cited exemptions would apply to the records because we are not the custodian and do not know what information is in the records. A determination on whether an exemption applies to specific records is a mixed determination of law and fact. The courts of Virginia are determiners of fact as they possess the authority to call witnesses, hear testimony, and review records to determine whether a lawful exemption applies to such records. If there is a factual dispute regarding whether an exemption applies in any given instance, only a court has the authority to resolve it. Va. Code § 2.2-3713(D) states that in any action to enforce the provisions of FOIA, "the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence."

If you believe that your FOIA rights have been violated, the statutory remedy provided in Va. Code § 2.2-3713 is to file a petition for mandamus or injunction in either general district or circuit court (petitioner's choice). The courts publish a sample form and instructions for use in general district court which we have linked on our Forms and Sample Letters webpage. Please do not hesitate to contact us if you have any questions or need additional information but please be advised, as with any other type of court proceeding, you may wish to consult your own attorney before deciding whether to file a petition.

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Thank you for contacting this office. I hope I have been of assistance.

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