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**BOARD OF SUPERVISORS
Agenda Item**

Meeting Date:	March 15, 2012
Title:	Stafford County, Virginia, Freedom of Information Act Policy
Department:	County Attorney's Office
Staff Contact/ Presented By:	Rysheda McClendon, Assistant County Attorney
Board Committee/ Other BACC:	Bylaws Committee
Staff Recommendation:	N/A
Budget Impact:	N/A
Time Sensitivity:	N/A

ATTACHMENTS:

1.	Background Report		
2.	Stafford County, Virginia, Freedom of Information Act Policy		
3.	Proposed Resolution R12-148		

Consent Agenda		Other Business		Unfinished Business
Discussion		Presentation	X	Work Session
New Business		Public Hearing		Add-On

REVIEW:

X	County Administrator	
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DISTRICT:	N/A
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BACKGROUND REPORT

At its January 17, 2012 meeting, the Board discussed revising its By-Laws. The Board appointed a By-Laws Committee, composed of Supervisor Snellings and Supervisor Thomas, and requested that the Committee prepare appropriate draft revisions to the By-Laws. The Committee was tasked with considering the addition of a Freedom of Information Action (FOIA) Policy to the By-Laws.

The By-Laws Committee met on May 3, 2012. The Committee desired the FOIA policy to exist and be adopted separate from the Board's By-Laws. The Committee met on May 10, 2012, and finalized the draft FOIA Policy entitled, "The Rights of Requesters and the Responsibility of Stafford County under the Virginia Freedom of Information Act," (Attachment A to proposed Resolution R12-148).

The draft FOIA Policy provides a centralized procedure for processing FOIA requests and a uniform methodology for calculating the fee, if charged, for Board members, public officers/officials, and staff response time. The methodology for calculating the fee is encapsulated in the follow formula:

$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times \frac{(\text{Yearly compensation})}{(52 \text{ weeks} \times 40 \text{ hr/wk})}$$

For example, based on this formula, currently a Board member's time would be charged at \$9.85 per hour; the Chairman's time would be charged at \$10.34 per hour; and a Planning Commission member's time would be charged at \$4.81 per hour.

The Rights of Requesters and the Responsibilities of Stafford County under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), found in Virginia Code § 2.2-3700 et seq., guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that its provisions be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Requester's FOIA Rights

- You have the right to request to inspect and/or receive copies of public records.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in general district or circuit court to compel compliance with FOIA.

Making a Request for Records from Stafford County

- You may request records by mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA. Nevertheless, the County would prefer requests to be submitted, in writing, on the attached form.
 - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives the County a clear statement of what records you are requesting. However, the County cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that the County can identify and locate the records that you are seeking.

- You may only request existing records or documents. FOIA gives you a right to inspect or copy records; it does not apply to general questions about the work of the County and its public officers, officials, and employees, nor does it require the County to create a record that does not exist.
- You may choose to receive electronic records in any format used by the County in the regular course of business.
 - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records.
- If the County has questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request.
- Stafford County shall comply with the following procedures for processing a FOIA request.
 - FOIA requests should be directed to the County Administrator's Office, as the centralized receiving center for FOIA requests.
 - By mail: County Administrator's Office
FOIA REQUEST
Administration Center
PO Box 339
Stafford, VA 22555
 - Fax (540) 658-7643
 - Phone (540) 658-4541
 - E-mail wmallow@staffordcountyva.gov
 - After receipt of the request, the County Administrator's Office will direct the request to the appropriate County Departments, the Board, and other public officials (as appropriate).
 - Department heads will implement and follow a process for providing FOIA requests to staff in his/her department for response.
 - If FOIA requests are initially received by any County Department, official, or employee, other than the County Administrator's Office, the request shall immediately be forwarded to the County Administrator's Office to follow the same centralized process detailed above.

- If you have questions regarding accessing records from the County, please contact the County Administrator's Office at (540) 658-4541.
- In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at foiacouncil@leg.state.va.us, or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

Stafford County's Responsibilities in Responding to Your Request

- The County must respond to your request within five (5) working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the County is irrelevant, and you do not have to state why you want the records before the County responds to your request. FOIA does, however, allow the County to ask you to provide your name and legal address.
- FOIA requires that the County make one of the following responses to your request within the five-day period:
 - Provide you with the records that you have requested in their entirety.
 - Withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the County will send you a response in writing. That writing will identify the volume and subject matter of the records being withheld, and state the specific section of the Virginia Code that allows the County to withhold the records.
 - Provide some of the records that you have requested, but withhold other records. The County cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the County may redact the portion of the record that may be withheld, and will provide you with the remainder of the record. The County will provide you with a written response stating the specific section of the Virginia Code that allows portions of the requested records to be withheld.
 - Inform you in writing that the requested records cannot be found or do not exist (the County does not have the records you want). However, if the County knows that another public body has the requested records, the County will include contact information for the other public body in the County's response to you.
 - If it is practically impossible for the County to respond to your request within the five-day period, the County will state this in writing, explaining the conditions that make the response impossible. This will allow the County seven (7) additional working days to respond to your request.

- If you make a request for a very large number of records, and the County feels that it cannot provide the records to you within 12 working days without disrupting its other organizational responsibilities, the County may petition the circuit court for additional time to respond to your request. Prior to petitioning the court, FOIA requires that the County make a reasonable effort to reach an agreement with you concerning the time for producing the records.
- Stafford County shall comply with the following procedures for responding to a FOIA request.
 - Staff, within each applicable Department, will provide all responsive records to his/her Department head.
 - All Department heads shall review all submitted, responsive records, ensuring all information required and allowed to be exempted, redacted, or withheld under the FOIA statutes has been excluded or redacted. The Department heads will also appropriately document any information redacted or withheld in accordance with the FOIA statutes.
 - The Department heads will transmit all records to the County Administrator's Office for final coordination. The County Administrator's Office will then transmit all records to the requester.
 - All Board members and other public officials/officers shall respond directly to the County Administrator's Office.
 - If at any time during the process a Department head or the County Administrator's Office has any legal questions about the records, responsiveness, exemptions, or information that shall/may be withheld or redacted, he/she may consult with the County Attorney's Office.
- Delays in responding to a FOIA request.
 - If staff or a Department head needs clarification regarding a FOIA request, and the ambiguity can be cleared up by communication with the requester, the Department head or the County Administrator's Office shall contact the requester.
 - If the Department head determines that he/she or his/her staff will not be able to respond to a FOIA request within the statutory five (5) working days, he/she shall communicate with the County Administrator's Office the need for more time and approximately how long the Department needs to respond to the request.
 - The County Administrator's Office shall communicate the need for an extension in writing, invoking the statutory additional seven (7) working days.
 - If greater than seven (7) days is necessary, the County Administrator's Office shall try to reach a reasonable agreement with the requester for

more time. If a reasonable agreement cannot be reached, the County Administrator's Office shall contact the County Attorney's Office to petition the circuit court for additional time.

- Please see the section below about cost and deposits with regards to further possible delays in responding.

Costs

- You may have to pay for the records that you request from Stafford County. FOIA allows the County to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If the County estimates that it will cost more than \$200 to respond to your request, the County will require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that the County has to respond to your request does not include the time between when the County asks for a deposit and when you respond.
- All deposits shall be paid by check or money order made payable to Stafford County and delivered to the County Administrator's Office. Checks and money orders will be held and only deposited once the request is complete. Any outstanding balance due must be paid before or at the time the responding records are released. Any balance remaining from the deposit shall be returned to the requester.
- You may request that the County estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs. The statutory time limits provided do not begin to run until you give the County permission to proceed, approving the estimate or by paying the deposit as required above.
- If you owe the County money from a previous FOIA request that has remained unpaid for more than 30 days, Stafford County may require payment of the past-due bill before it will respond to your new FOIA request.
- Responses to FOIA requests that require 30 minutes or less of an individual Board member, public officer/official, or staff member time, will not be charged to you.
- Board members, public officers/officials, and Constitutional officers shall have discretion to determine if his/her individual time spent responding to a FOIA request (in excess of 30 minutes), will be charged to the requester. If the member, official, or officer chooses not to charge for his/her time, he/she shall communicate that determination to the County Administrator's Office when providing the requested records.

- The fee charged for responses by Board members and public officials/officers shall be based upon the individuals' pay as a County official and shall not take into account any non-County employment. His/her time shall be charged based on the following formula:

$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times \frac{(\text{Yearly compensation})}{(52 \text{ weeks} \times 40 \text{ hr/wk})}$$

- The fees charged for constitutional officers, department heads, and staff response time shall be based on the actual amount of time individually spent responding to the FOIA request.

- Time of officers, department heads, and staff who are paid hourly, shall be charged based on the following formula:

$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times (\text{Hourly pay})$$

- Time of officers, department heads, and staff who are salary, shall be charged based on the following formula:

$$(\text{FOIA response fee}) = (\text{Time to respond in hours}) \times \frac{(\text{Yearly salary})}{(52 \text{ weeks} \times 40 \text{ hr/wk})}$$

- The County will take all reasonable precautions to keep staff time and cost at a minimum, including using lower paid staff members capable of retrieving records to respond to a request. However, in situations where a staff member is required to search through his/her own email and files contained on his/her individual County computer or other device, it shall not be unreasonable for that individual staff member to retrieve the requested records and charge a FOIA response fee corresponding to his/her salary.

- Fees charged for supplies, duplications, etc. shall be as follows:

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|----------------------|---------------------------------|
| ▪ Copies | \$.02 per page |
| ▪ Compact Disc | \$.30 per C.D. |
| ▪ Mail | Actual cost to mail the request |
| ▪ Documents from GIS | See the GIS fee schedule |

Commonly used exemptions

The Virginia Code allows any public body to withhold certain records from public disclosure. Stafford County commonly withholds records subject to the following exemptions:

- Records subject to attorney-client privilege (Virginia Code § 2.2-3705.1(2)) or attorney work product (Virginia Code § 2.2-3705.1(3))

- Records relating to the negotiation and award of a contract, prior to a contract being awarded (Virginia Code § 2.2-3705.1(12))
- Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease (Virginia Code § 2.2-3705.1(8))
- Personnel records (Virginia Code § 2.2-3705.1(1))

For a full list of exemptions, see Virginia Code § 2.2-3705.1 et seq.

Policy regarding the use of exemptions

- It is Stafford County's general policy to exempt any and all records that are allowed to be exempted, redacted, or excluded from production by law.
- Any record exempt under the Virginia Code, which the custodian of the record has the option of disclosing, shall not be disclosed.

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 15th day of May, 2012:

MEMBERS:

Susan B. Stimpson, Chairman
Cord A. Sterling, Vice Chairman
Jack R. Cavalier
Paul V. Milde III
Ty A. Schieber
Gary F. Snellings
Robert "Bob" Thomas, Jr.

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION TO ADOPT A STAFFORD COUNTY, VIRGINIA,
FREEDOM OF INFORMATION ACT (FOIA) POLICY

WHEREAS, the General Assembly enacted the Virginia Freedom of Information Act (FOIA), Virginia Code § 2.2-3700, et. seq., to ensure the people of the Commonwealth have ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted; and

WHEREAS, the Board embraces the ideal of transparent government and is fully supportive of the statutory requirement to provide public access to all records and materials having to do with the transaction of public business, while contemporaneously protecting the legitimate privacy interests of individuals and taking appropriate account of other laws; and

WHEREAS, the Board recognizes that the County receives a significant number of Freedom of Information Act (FOIA) requests and desires to facilitate public access to the official records of the County and to respond to FOIA requests in a timely fashion; and

WHEREAS, the Board finds it necessary and appropriate to establish guidelines for carrying out the provisions of FOIA, including establishing a centralized processing procedure and a uniform fee methodology; and

WHEREAS, the Board is considering adopting a FOIA Policy through a document entitled "The Rights of Requesters and the Responsibility of Stafford County under the Virginia Freedom of Information Act," a copy of which is attached hereto as Attachment A; and

WHEREAS, the Board finds that the FOIA Policy will provide the public, Board members, public officials/officers, and County staff with information that will allow for efficient and timely receipt of and response to FOIA requests;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 15th day of May, 2012, that the Board be and it hereby does adopt a Stafford County, Virginia, Freedom of Information Act (FOIA) Policy through a document entitled "The Rights of Requesters and the Responsibility of Stafford County under the Virginia Freedom of Information Act," attached hereto as Attachment A.

CLS:RMM:ce