

**REPORT OF THE
SECRETARY OF ADMINISTRATION**

**STUDY OF EXECUTIVE AGENCIES'
RESPONSES TO PUBLIC REQUESTS
FOR INFORMATION UNDER THE
FREEDOM OF INFORMATION ACT**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 31

**COMMONWEALTH OF VIRGINIA
RICHMOND
1998**



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Michael E. Thomas
Secretary of Administration

January 12, 1997

The Honorable George Allen
Members, Virginia General Assembly

Dear Governor Allen and General Assembly Members:

Pursuant to Senate Joint Resolution 290 ("SJR 290"), I am enclosing the results of our study examining the efficiency with which executive agencies respond to requests for information under the Virginia Freedom of Information Act ("FOIA" or "the Act") from the public and the cost to individuals for receiving such information.

Each of the Governor's Secretaries cooperated in gathering information from the agencies under their supervision. I want to thank each agency that submitted materials because I am acutely aware of what a time-consuming effort it was to comply with the study's requirements. Many agencies had to invest hundreds of man-hours into the effort of reviewing their files in order to catalogue a year's worth of FOIA requests.

With greatly-appreciated assistance from all who helped, I have prepared this report detailing the great extent to which the FOIA is serving the needs of the citizens of the Commonwealth. The information reviewed indicates that executive agencies are doing an excellent job in adhering to the guidelines of the FOIA.

Thank you for the opportunity to conduct this study. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Thomas", written in a cursive style.

Michael E. Thomas

Executive Summary

First and foremost, thanks is due to the state agencies that participated in this study. Without their invaluable assistance, the analysis contained herein would not have been possible.

In order to fulfill the requirements of SJR 290, all of the agencies of the Executive Branch were canvassed and asked to submit information pertaining to the FOIA requests that they received during calendar year 1997. For help in reviewing their files, agencies were reminded that a specific reference to the FOIA is not necessary in order to invoke the provisions of the Act. In an effort to provide the agencies with explicit guidance, we instructed them to exclude information pertaining to those requests that agencies handle as an integral part of the basic customer service that they provide; these types of requests would be ones that are attributable to the agency's direct duties and responsibilities as delineated in the Code of Virginia.

Our survey of the agencies focused on four principal issues: (1) the nature of the request; (2) the timeliness of fulfilling the request; (3) the cost and charge of the request; and (4) the circumstances surrounding any instances when requests were denied. Agencies were asked to answer a number of questions in each category. The resulting information provides insight both on individual requests and on the total number of requests fielded by agencies.

This report encompasses a review of 7,875 requests received by 56 different executive agencies. For those agencies that did not submit reports, we have operated under the assumption that they did not receive any requests that fell within the aforementioned guidelines. The one exception to this blanket observation is the Department of Corrections which indicated that their FOIA requests were catalogued in such a disparate number of files encompassing such a multitude of physical locations as to make it virtually impossible to comply with the study's requirements.

The data reported supports the conclusion that executive agencies are fulfilling requests properly and usually in the prescribed timeframe. Significantly, executive agencies recoup only a fraction of the cost that is necessary to honor the requests.

I. Introduction

The agencies comprising the Executive Branch of government field many thousands of requests for information each year from citizens across the Commonwealth. Commensurate with the expectations of both Governor Allen and the customers of Virginia's government, these requests are handled in a prompt and courteous manner. Apart from an agencies' prescribed duties and responsibilities, this report attempts to examine those requests that were fulfilled within the guidelines of the Virginia Freedom of Information Act, regardless of whether the Act was mentioned by name.

The 7,875 inquiries related to almost as many different subject matters as the number of requests received; however, nearly two-thirds of the requests were handled by agencies within the Commerce and Trade and Health and Human Resources Secretariats.

II. The Time Required to Respond to FOIA Requests

The Freedom of Information Act provides that agencies shall make an initial response to citizens requesting records within five work-days, and that specific reference to the Act is not necessary in order to invoke its provisions. Furthermore, if an agency finds that it is practically impossible to supply the requested information within the five-day time limit, then the agency shall so inform the requester and shall have an additional seven work-days during which to supply a response.

This study's review of 7,875 FOIA requests shows that in nearly 90% (89.4%) of the instances, the citizen was provided with a response in five or fewer work-days.

Of the 834 requests that required more than five days to process, nearly three-quarters (73%) were handled within the allowable 12-day limit. Well over one-half of the requests (56%) completed within this six-12-day timeframe were handled by three agencies (Departments of Health, Health Professions and Labor and Industry).

Finally, in 222 out of the 7,875 requests, those characterized by their substantial breadth and scope, it was necessary for the agency to work with the requester to extend the response beyond the 12-day timeframe. Well over one-third (37%) of these requests were handled by a single agency (Department of Labor and Industry).

III. The Cost of Providing the Requested Information

The Freedom of Information Act provides that agencies may make reasonable charges for the copying, search time and computer time expended in supplying requested information, but that such charges may not exceed the actual cost of supplying such records or documents. One of the SJR 290 study directives is to determine “whether fees charged for such information represented or exceeded the costs incurred.”

The agency reports recorded that none of the 7,875 specific requests resulted in a charge which exceeded the cost incurred. Indeed, in only a small number of the cases was the charge even equal to the cost incurred. In the great majority of the instances reviewed, the cost of fulfilling the request was greater than, and in some examples greatly in excess of, the charge assessed to the requester. There was no charge at all in 64% of the cases.

Forty of the Fifty-six agencies (71%) that participated in the survey charged less, in the aggregate, for providing the information than it cost the agency to assemble the necessary documents and files. From a statewide perspective, the charge for fulfilling FOIA requests was \$113,119 less than the actual cost of fulfilling the requests. This disparity is understated because many agencies have been unable to fully quantify the personnel costs associated with responding to the requests; in many instances, it required varying levels of input from multiple employees to respond to a single request.

IV. The Requests that Agencies Were Unable to Fulfill

The FOIA stipulates that if the information being requested is exempt from the provisions of the Act then the agency shall so notify the requester and cite the specific provision of the Act which grants the exemption. In only 5% of the cases (5.49%) did agencies, citing the specific exemption provision in the Act, withhold requested information. None of the evidence reviewed indicated an instance when an agency did not cite the specific provisions of the Act exempting the release of requested information.

The majority of the exempted information (72.9% of the denied requests) is concentrated in the following areas: on-going or completed investigation reports dealing with matters of a criminal nature and matters dealing with the work and deliberations of the Parole Board. These types of documents and materials are exempted from disclosure under the Act due to their sensitive public safety nature.

Of the 7,875 individual requests reviewed, there was only one instance of information that was not released due to an exemption under the provisions of Code Section 2.1-342.B.4. In this situation, a member of an Executive Branch Board requested information from its affiliated agency pertaining to documents discussing the Governor’s options, and the merits of each one, in determining

how to act on legislation. In this instance, the requested information was considered "Governor's Working Papers."

IV. Conclusion and Recommendations

The two principal directives of Senate Joint Resolution 290 are to examine the efficiency with which Executive Branch agencies respond to FOIA requests and the cost to individuals for receiving such information. On both accounts, the evidence demonstrates that the Commonwealth is fulfilling its obligations in a manner that is beneficial to its customers. In 90% (89.4%) of the surveyed requests, agencies are supplying the necessary information in five or fewer work-days. Additionally, it costs the Commonwealth, in the aggregate, \$113,119 in excess of the amount charged in order to retrieve, assemble and furnish the requested information. Furthermore, in no instance was an individual charged more than the actual cost of providing the requested materials.

Given the substantial degree to which agencies are meeting the needs and expectations of citizens who are requesting information under FOIA, this report does not have any recommendations to offer in that area; however, there are some changes that could be made in the area of record-keeping. Many agencies have their files arranged such that FOIA requests, instead of being in a central file, are in the file dealing with the individual or organization that made the request. For future tracking, it would be helpful if, in addition to the individual files, a centralized source kept a summary of the agency's FOIA activity so that data could be provided without having to review all of the agency's files.

The implementation of the Virginia Information Providers Network (VIPnet) will give Virginians access to more government information than could have been imagined just a few years ago, and at no charge to them. Because of VIPnet, agencies will realize a large decrease in both routine requests for information and requests made under FOIA.

In summary, the findings of this report illustrate that state agencies are responding to the requests of the Commonwealth's citizens in an expeditious and thorough manner.

SF TARIAL TOTALS

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
Education	163	132	126	14	\$9,048
Trans.	136	118	111	10	\$6,393
C&T	2286	2068	1342	40	\$22,432.90
Admin.	98	68	62	7	\$6,019.67
Finance	49	48	49	10	\$329.70
HR	2784	2335	1493	71	\$12,253.04
Nat. Res.	1745	1674	1412	14	\$38,633
Public Safety	614	598	460	267	\$18,010.03
TOTALS	7875	7041	5055	433	\$113,119
		% ≤ 5 days	% w/o charge	% Denied	
		89.4095238	64.1904762	5.4984127	

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
Comm. Arts	4	4	4	0	\$0
DOE	50	40	50	1	\$3,440.28
SCHEV	11	11	10	0	\$15
VCCS	5	4	5	0	\$10
W&M	3	2	3	1	\$900
GMU	12	8	10	4	\$2.45
JMU	5	4	5	3	\$0
ODU	20	17	5	0	\$4,276.22
FU	2	0	2	2	\$400
VSU	5	2	5	1	\$0
UVA	18	12	2	2	\$0
FBC	3	3	0	0	\$4
MWC	25	25	25	0	\$0
Totals	163	132	126	14	\$9,048
		% ≤ 5 days	% w/o charge	% Denied	
		80.9815951	77.3006135	8.58895706	

Transportation

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
DMV	101	108	94	10	\$4,151
Port Auth.	2	2	0	0	\$193
VDOT	31	22	15	0	\$1,473.84
Rail	2	2	2	0	\$575
Totals	136	134	111	10	\$6,393
		% ≤ 5 days	% w/o charge	% Denied	
		98.5294118	81.6176471	7.35294	

Com e & Trade

	# Requests	# ≤ 5 days	# w/charge	# Denied	Cost to fulfill in excess of amount charged
Agriculture	1145	1118	1031	12	\$10,348.12
DPOR	637	632	52	25	\$3,764.05
VEC	8	4	8	1	\$0
Forestry	121	79	121	1	\$5,710.24
DHCD	7	6	2	0	\$138
Labor	293	166	67	0	\$2,010.09
Milk Comm.	3	2	3	0	\$17
DMME	60	8	11	1	\$445
Racing Comm.	7	3	3	0	\$0
Econ. Dev.	5	0	0	0	\$0.00
Totals	2286	2018	1298	40	\$22,432.90
		% ≤ 5 days	% w/o charge	% Denied	
		88.2764654	56.7804024	1.74978128	

ministration

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
CB	15	15	13	0	\$0
CIM	6	6	4	0	\$105.16
DGS	50	28	32	4	\$5,661.62
DPT	8	2	6	0	\$98.70
DERC	9	9	5	3	\$72.19
DIT	10	8	2	0	\$82
Totals	98	68	62	7	\$6,019.67
		% ≤ 5 days	% w/o charge	% Denied	
		69.3877551	63.2653061	7.14285714	

	# Requests	# ≤ 5 days	# w/ charge	# Denied	Cost to fulfill in excess of amount charged
DPB	1	1	1	1	0
Taxation	3	2	3	1	0
DOA	5	5	5	0	0
Treasury	40	40	40	8	\$329.70
Totals	49	48	49	10	\$329.70
		% ≤ 5 days	% w/o charge	% Denied	
		97.9591837	100	20.4081633	

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
Health Prof.	927	815	204	54	\$4,173.80
Rehab Svcs.	8	4	8	1	\$836.32
DMAS	1171	1096	1112	7	\$4,545
Health	586	350	112	4	\$0
Social Svcs.	40	26	20	3	\$414.51
DMHMRSAS	51	43	36	2	\$2,280.91
People w/ Dis.	1	1	1	0	\$2.50
Totals	2,784	2,335	1,493	71	\$12,253.04
		% ≤ 5 days	% w/o charge	% Denied	
		83.8721264	53.6278736	2.55028736	

Natural Resources

	# Requests	# ≤ 5 days	# w/o charge	# Denied	Cost to fulfill in excess of amount charged
DCR	11	10	9	0	\$30
Historic Res.	8	7	6	0	\$184.83
Marine Res.	22	22	3	0	\$0
DGIF	72	65	10	0	\$6,890
DEQ	1632	1570	1384	14	\$31,528.13
Totals	1745	1674	1412	14	\$38,633
		% ≤ 5 days	% w/o charge	% Denied	
		95.9312321	80.9169054	0.80229226	

Public Safety

	# Requests	# ≤ 5 days	# w/o charge	#Denied	Cost to fulfill in excess of amount charged
State Police	426	421	289	167	\$290.55
ABC	31	27	19	3	\$126.03
Corr. Edu.	4	2	1	0	\$197.91
Natl. Guard	19	19	19	0	\$14,514.33
Parole Bd.	100	100	99	95	\$0
Juvenile Jus.	7	2	7	1	\$0
DCJS	27	27	26	1	\$2,881.21
Totals	614	598	460	267	\$18,010.03
		% ≤ 5 days	% w/o charge	% Denied	
		97.3941368	74.9185668	43.485342	

