Rights & Responsibilities:

The Rights of Requesters and the Responsibilities of Town of Haysi under the Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA), located in § 2.2-3700 et seq. of the Code of Virginia, 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 policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

Your FOIA Rights

- You have the right to request to inspect **or** receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance. As of July 1, 2022, public bodies must notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, you may contact the FOIA Council for a nonbinding advisory opinion.

Making a Request for Records from Town of Haysi

- You may request records by U.S. Mail, fax, email, in person, or over the phone - FOIA does not require that you use any particular method to convey your request. FOIA also does not require that your request be in writing, nor do you need to state that you are requesting records pursuant to FOIA.

    - 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 us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we 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 we can identify and locate the records that you are seeking.

- Your request must ask for existing records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of Town of Haysi, nor does it require Town of Haysi to create a record that does not exist.

- You may choose to receive electronic records in any format used by Town of Haysi 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 email, on a computer disk or flash drive, or to receive a printed copy of those records.

- If we have 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. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

To request records from Town of Haysi, you may direct your request to Amanda Perrigan. She can be reached at 162 Backbone Ridge, P.O. Box 278, Haysi, VA 24256, by phone at (276) 865-5187, or email at haysiclerk@dcwin.org. You may also contact her with questions you have concerning requesting records from Town of Haysi.

In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about how FOIA works. The Council was created in the legislative branch of state government to issue opinions on the operation and application of FOIA, to publish educational materials, and to provide training about FOIA. However, please be aware that the Council is not a records repository and does not process records requests on behalf of other public bodies, nor is the Council an investigative or enforcement agency. The Council may be contacted by email at

foiacouncil@dls.virginia.gov, or by phone at (804) 698-1810 or toll-free at 1-866-448-4100.

Town of Haysi's Responsibilities in Responding to Your Request

- Town of Haysi must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends, holidays or other days when Town of Haysi is closed for business.

  - The reason behind your request for public records from Town of Haysi is irrelevant, and you do not have to state why you want the records before we respond to your request. FOIA does, however, allow Town of Haysi to require you to provide your name and legal address.

  - FOIA requires that Town of Haysi make one of the following responses to your request within the five-day time period:

    1) We provide you with the records that you have requested in their entirety.

    2) We 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, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.

    3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.

    4) We inform you in writing that the requested records cannot be found or do not exist (we do not have the records you requested). However, if we know that another public body has the requested records, we must include contact information for the other public body in our response to you.

    5) If it is practically impossible for Town of Haysi to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us an additional seven working days to respond to your request, giving us a total of 12 working days to respond to your request. In the case of criminal

investigative files requested pursuant to § 2.2-3706.1 of the Code of Virginia, we are allowed an additional 60 working days to respond to your request, giving us a total of 65 working days to respond to your request.

- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 working days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

Charges

- A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of the Code of Virginia.

- Town of Haysi assesses charges for accessing or searching for requested records and paper copies based on the hourly rate of the employee(s) responding to the request. Depending on which department the records requested will come from determines which employee and hourly rate will apply.

- You may have to pay for the records that you request from Town of Haysi. FOIA allows us 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. Any charges cannot include general overhead costs.

- If we estimate that it will cost more than $200 to respond to your request, we may require you to pay a deposit, not to exceed the amount of the estimate, before proceeding with your request. The five days that we have to respond to your request does not include the time between when we ask for a deposit and when you respond.

- You may request that we 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 five days that we have to respond to your request does not include the time between when we send you the estimate and when you respond. If you do not respond within 30 days, then your request will be deemed to be withdrawn.

- If you owe us money from a previous FOIA request that has remained unpaid for more than 30 days, Town of Haysi may require payment of the past-due bill before it will respond to your new FOIA request.

Types of Records

The following is a general description of the types of records held by Town of Haysi:

- Personnel records concerning employees and officials of Town of Haysi
- Records of contracts which Town of Haysi has entered into
- Financial Records
- Ordinances and Resolutions
- Haysi Town Council Minutes
- Police Department Records

If you are unsure whether Town of Haysi has the record(s) you seek, please contact Amanda Perrigan directly at 162 Backbone Ridge, P.O. Box 278, Haysi, VA 24256, by phone at (276) 865-5187, or email at haysiclerk@dcwin.org.

Commonly Used Exemptions

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

- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))

- Requests by persons incarcerated in a state, local or federal correctional facility (§ 2.2-3703(C)).

- Tests or examinations used, administered or prepared for purposes of evaluation of any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or qualifications for any license or certificate (§ 2.2-3705.1 (4)).

- Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person (§ 2.2-3705.2 (4)).

- Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information (§ 2.2-3706 (A) (2) (a)).

The Federal Freedom of Information Act only applies to federal agencies and not to the town or other state/local agencies.

The following frequently requested records are governed by the following statutes:

- Active criminal investigations are governed by the restrictions set forth under § 52-8.3.

- Criminal history records are governed by the restrictions set forth under § 19.2-389.

- Accident reports and information regarding accidents are governed by § 46.2-379 and § 46.2-380. FR300/Accident Reports, may be obtained through the Virginia Department of Motor Vehicles.

- Sex Offender Registry information is governed by §§ 9.1-900 et seq.

- Criminal intelligence files, Title 28 Code of Federal Regulations, Part 23.

Policy Regarding the Use of Exemptions

- The general policy of Town of Haysi is to invoke the personnel records exemption in those instances where it applies in order to protect the privacy of employees and officials of Town of Haysi.

- The general policy of Town of Haysi is to invoke the contract negotiations exemption whenever it applies in order to protect Town of Haysi bargaining position and negotiating strategy.